(B)

No. 91-1420-ATX
Status: GRANTED

Title: Joan Growe, Secretary of State of Minnesota, et al., Appellants
v.
James Emison, et al.

Docketed:
March 6, 1992

Court: United States District Court
for the District of Minnesota

Counsel for appellant: Tunheim,John R.

Counsel for appellee: Willis,Bruce D., Spencer,Eldon J., Johnson,Mark J.

also 40 copies of appendix also motion to expedite

Entry	Date	Note	Proceedings and Orders
1	Mar 6 1992	G	Statement as to jurisdiction filed.
3	Mar 6 1992	G	Motion of appellants to expedite consideration of the jurisdictional statement filed.
5	Mar 6 1992		Appendix of appellant filed.
2	Mar 9 1992	P	Application (A91-671) for a stay of enforcement of judgment pending disposition of appeal docketed March 6, 1992, submitted to Justice Blackmun.
14	Mar 9 1992		(A91-671) Appellees memo in opposition to application for stay filed.
4	Mar 11 1992		(A91-671) Upon consideration of the application of counsel for the appellants and the response filed thereto, It is ordered that the judgment of the United States District Court for the District of Minnesota, civil case #4-91-202, filed February 19, 1992, with respect to the new state legislative redistricting plan is stayed pending this Court's action on the statement as to jurisdiction. In the event the judgment is affirmed, this order is to terminate automatically. Should jurisdiction be noted or postponed, or should the judgment be summarily vacated or reversed, this order is to remain in effect pending the sending down of the judgment of this Court. The application for stay of the above-referenced judgment with respect to the congressional redistricting plan is denied.
15	Mar 11 1992		(A91-671) Appellants reply memo in support of application for stay.
6	Mar 23 1992		DISTRIBUTED. March 27, 1992
7	Mar 23 1992	X	Brief of appellees James Emison, et al. and appendix in opposition filed.
8	Mar 25 1992	X	Reply brief of appellant Joan Growe (TBP) filed.
9	Mar 26 1992	X	Supplemental brief of appellees James Emison, et al. filed.
10	Mar 30 1992		PROBABLE JURISDICTION NOTED.
			**********
11	Mar 30 1992		Motion of appellants to expedite consideration of the jurisdictional statement GRANTED.
13	May 6 1992		Order extending time to file brief of appellant on the merits until May 29, 1992.
16	May 29 1992		Brief amicus curiae of United States filed.

No. 91-1420-ATX

Entry	Date	Note	Proceedings and Orders
17	May 29 1992	G	Motion of Martin Frost, et al. for leave to file a brief as amici curiae filed.
18	May 29 1992		Joint appendix filed.
19	May 29 1992		Brief of appellant Joan Growe, Secretary of State of the State of Minnesota filed.
20	Jun 10 1992		Opposition of appellees to mction of Congressman Martin Frost, et al. for leave to file a brief as amici curiae filed.
23	Jun 12 1992	G	Motion of the Solicitor General for leave to participate in oral argument as amicus curiae and for divided argument filed.
21	Jun 15 1992		Motion of Martin Frost, et al. for leave to file a brief as amici curiae GRANTED.
22	Jun 30 1992		Brief of appellees James Emison, et al. filed.
24	Jul 14 1992		CIRCULATED.
25	Jul 28 1992		Record filed.
		*	Certified proceedings United States District Court, District of Minnesota (BOX)
26	Jul 30 1992	X	Reply brief of appellant filed.
27	Aug 21 1992		SET FOR ARGUMENT MONDAY, NOVEMBER 2, 1992. (2ND CASE).
28	Sep 4 1992		Motion of the Solicitor General for leave to participate in oral argument as amicus curiae and for divided argument GRANTED.
29	Nov 2 1992		ARGUED.

91-1420 (1)

Supreme Court, U.S.
FILED
6
MAR 1992
OFFICE OF THE CLERK

No. _____

In The
Supreme Court of the United States
October Term, 1991

Joan Growe, Secretary of the
State of Minnesota, et al.,
Appellants,

v.

James Emison, et al.,
Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

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QUESTIONS PRESENTED

Was the federal court required by principles articulated in Scott v. Germano to defer to the state court where parallel actions challenging the state's legislative and congressional districts were filed in each court?

Does the federal court's order violate principles of Full Faith and Credit and collateral estoppel which extend to state court judgments?

Did the federal court err in not dismissing as moot the claims asserted by the federal plaintiffs?

Is the federal court's finding of a Voting Rights Act violation, made in the context of a wholly undeveloped factual record, clearly erroneous?

Assuming, arguendo, that the federal court correctly determined that the state redistricting plan as applied to the City of Minneapolis violates the Voting Rights Act, did the federal court nonetheless err in redistricting the entire state in a manner inconsistent with state policy?

LISTING OF ADDITIONAL PARTIES

Appellants

Patricia Cotlow, Philip Krass, Sharon LaComb, James Stein, and Theodore Suss, individually and on behalf of all citizens of Minnesota similarly situated; Patrick O'Connor, Hennepin County Auditor, individually and on behalf of all County Auditors of the State of Minnesota; the Seventy-seventh Minnesota State House of Representatives; and the Seventy-seventh Minnesota State Senate.

Appellees

Judy Fairbanks, Marie Iverson, Ken Dean, Steve Castillo, Lew Freeman, and Yao Lo, individually and on behalf of all Citizens and Voters of the State of Minnesota similarly situated; Duane Benson, Terry Dempsey, Delores Hettig, Richard Harmon, David E. Peterson, E.M. Patricia Pidcock, and Frank Ringsmuth; and Mark Lundgren, Carver County Auditor, individually and on behalf of all County Auditors of the State of Minnesota.

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IN THE

Supreme Court of the United States

October Term, 1991

No. _____

Joan Growe, Secretary of State of
the State of Minnesota, et al.,

Appellants,

vs.

James Emison, et al.,

Appellees.

**Appeal from the United States District Court
for the District of Minnesota**

CITATION TO OPINION BELOW

The February 19, 1992, Memorandum Opinion and Order issued by the three-judge federal court is not officially reported. It was filed in the United States District Court for the District of Minnesota, Fourth Division, as Civil File Number 4-91-202, and is set forth in the accompanying Appendix at App. A-11.

JURISDICTION

The Order and Judgment appealed from were filed on February 19, 1992. This Court has jurisdiction under 28 U.S.C. § 1253.

CONSTITUTIONAL, STATUTORY AND OTHER PROVISIONS INVOLVED

Pursuant to Supreme Court Rule 14.1, the constitutional, statutory and other provisions involved in this case are set out in the Appendix at App. A-373.

STATEMENT OF THE CASE

Since early 1991, actions have been pending in Minnesota state court and in Minnesota federal district court challenging the constitutionality of Minnesota's legislative and congressional districts after the 1990 Census.

The first action was commenced in state court on January 24, 1991, while the Minnesota Legislature was in session but before it had adopted any redistricting plans. Complaint in Cotlow, et al. v. Growe, App. A-174. The plaintiffs sought a declaratory judgment that the 1982 federal court-mandated legislative and congressional redistricting plans violate the state and federal constitutions.

On March 18, 1991, the appellees James Emison, et al., commenced this action. Their complaint asked the federal court to declare that the 1982 legislative plan violated the Minnesota Constitution, the United States Constitution, and the Voting Rights Act.

During February and March of 1991, redistricting committees

of the Legislature held public hearings around the State, including one in the Black neighborhood of north Minneapolis, soliciting public comment on standards for and content of plans for legislative districts. Such comments were received from both Black and American Indian leaders and the Legislature's plan for minority districts reflected the preferences of these communities with respect to the allocation of minority populations among voting districts.

On May 29, 1991, the Minnesota House and Senate enacted 1991 Minn. Laws ch. 246 ("Chapter 246"), which drew new state legislative districts. The governor attempted to veto the bill; however, the veto was later declared invalid and the bill declared law. Seventy-Seventh Minnesota State Senate v. Carlson, Court File No. C3-91-7547 (Minn. Dist. Ct., 2d Judicial Dist., August 2, 1991).

On August 9, 1991, appellees Duane Benson, et al., also filed suit in federal court, seeking a declaration that Chapter 246 violated the federal and state constitutions. The complaint did not allege that Chapter 246 violated the Voting Rights Act.

On August 21, 1992, the federal court issued a Memorandum Opinion and Order that denied motions of the Minnesota Legislature and the Secretary of State asking the federal court to abstain pending further state court action, but granted the Legislature's motion to abstain pending further legislative action. App. A-106-118.

The state court, on October 21, 1991, after an initial review of Chapter 246, stated that Chapter 246 contained "numerous infirmities, including non-contiguous districts" in contravention of the Minnesota Constitution, Article IV, §§ 2 and 3, and the Fourteenth Amendment to the United States Constitution. App. A-220. The state court ordered the parties to submit by October 7, 1991, any allegations that Chapter 246 violated the Voting Rights

Act. App. A-226. No Voting Rights Act violations were asserted in response to this order. App. A-244.

The state court completed its review of Chapter 246 on November 21, 1991, and issued an order stating:

> Most of the constitutional and statutory defects in Minnesota Law 1991, Chapter 246 can be cured by ascertaining and effectuating the legislative intent, see Minn. Stat. § 645.16 (1990); and by applying canons of statutory construction, Minn. Stat. §§ 645.16 through 645.43 (1990). App. A-244.

The state court also promulgated an order in preliminary form that established a legislative apportionment plan. The plan was based on Chapter 246 but corrected all federal and state constitutional violations. The state court expressly concluded in its order that "Chapter 246 contains no Federal Voting Rights Act violation." App. A-244. At a hearing on December 3, 1991, the state court asked the parties to identify any errors in the preliminary order and announced it intended to issue a final legislative redistricting plan shortly. Two days later, however, the federal court stayed all proceedings in the state court, including all previous orders of the state court. App. A-153-154.

On December 9, 1991, the state court issued its final redistricting plan, "subject to the stay issued by the United State District Court in Emison." App. A-259. The state court also required the parties, subject to the federal court's stay, to submit all proposed plans for congressional redistricting on or before January 17, 1992. App. A-256-260.

A Notice of Appeal of the federal court's injunction was filed on December 13, 1991. On January 10, 1992, this Court vacated

the federal court's order. App. A-166.

In the meantime, on January 9, 1992, the Minnesota House and Senate passed two bills. Senate File 1596 ("S.F. 1596") established a legislative redistricting plan based on Chapter 246 but corrected all defects in the law. Senate File 1597 ("S.F. 1597") established new congressional districts. The governor vetoed both bills on January 10, 1992.

On January 17, 1992, the intervening plaintiffs Cotlow, et al., moved the federal court to reconsider its August 21, 1991, order denying the motions of the Secretary of State and the Minnesota Legislature for the federal court to abstain pending completion of the state court action. This motion was denied without hearing or opinion on February 11, 1992. App. A-172.

On January 30, 1992, the state court entered judgment, thus finalizing the court's legislative redistricting plan. App. A-355. On January 31, 1992, the Secretary of State and the Hennepin County Attorney by letter instructed local units of government that the state court's legislative redistricting plan became final on January 30, 1992, and that the statutory requirements for local redistricting had begun to run. App. A-371-372. The letter states "city wards and precinct boundaries must be redrawn by March 30, 1992; all other election districts by April 20, 1992." Id. In accordance with these instructions, many local units of government went forward with redistricting.

On February 19, 1992, the federal court issued its final redistricting Memorandum Opinion and Order ("Order"). App. A-11. Judgment was entered on the same day. App. A-71. The federal court found that the Voting Rights Act, 42 U.S.C. § 1973, requires the creation of a majority minority senate district in Minnesota and that Chapter 246 failed to create such a district. App. A-38-39. The federal court then issued its own legislative

redistricting plan, one that was not based on Chapter 246. App. A-55. As shown by the maps in the Appendix at A-1-6, the 201 districts created by the federal court's plan are completely different from the districts created by the state court's plan.

The federal court also issued its own congressional redistricting plan based on its belief that S.F. 1597, as passed by both houses of the Minnesota Legislature, was entitled to no weight because the governor had vetoed it. App. A-53.

The federal court ordered the Secretary of State to accept filings and conduct elections only in conformance with its redistricting plans, and enjoined the Secretary from accepting filings and conducting elections inconsistent with the federal court's plans. App. A-57-58.

Appellants filed their Notice of Appeal to this Court on February 25, 1992. App. A-362. This Court has jurisdiction pursuant to 28 U.S.C. § 1253 to review a decision of a statutory three-judge district court on appeal by any party from an order granting an injunction.

THE QUESTIONS PRESENTED ARE SUBSTANTIAL

I. INTRODUCTION

For the second time in less than three months the court below has effectively thwarted the valid exercise of jurisdiction by a state court having concurrent jurisdiction of the subject matter. On the first occasion, when the federal district court issued an order staying the state court proceeding, this Court summarily vacated the federal court's order.

Now the federal court seeks to do indirectly what this Court forbade it to do directly, namely, to defeat the implementation of the state court's redistricting plan, not by enjoining the court, but

by enjoining all Minnesota election officials from conducting elections pursuant to the state court's order. As Judge MacLaughlin stated in dissent: "Having failed to successfully enjoin the state court's reapportionment plan, the majority, instead of staying its hand and allowing the state plan to proceed, reaches out in an invalid and transparent second attempt to accomplish the same purpose." App. A-69-70.

For the reasons set forth below, this Court should again summarily vacate the federal court's order and remand with instructions to take no further action unless and until the state court fails to complete the Minnesota redistricting process.

II. THE FEDERAL COURT'S ORDER VIOLATES THE SCOTT V. GERMANO DOCTRINE

The federal court's redistricting order, although purporting to heed this Court's pronouncements in Scott v. Germano, 381 U.S. 407 (1965) (per curiam), violates both the letter and the spirit of that decision. In Germano, this Court unequivocally stated its support for the role of state courts in the redistricting process: "The power of the judiciary of a State . . . to formulate a valid redistricting plan has not only been recognized by this Court but appropriate action by the States has been specifically encouraged." Id. at 409.

The Court in Germano did more than emphasize the importance of the state courts in the redistricting process. It states a broad rule of deference to states and state courts in redistricting matters which extends to the circumstances of this case. See id. (vacating order of District Court and remanding with directions that District Court enter order fixing "reasonable time" within which "appropriate agencies of the state . . ., including its Supreme Court may validly redistrict the [State Legislature] . . . "); see also

Chapman v. Meier, 420 U.S. 1, 27 (1975) ("We say once again what has been said on many occasions: reapportionment is primarily the duty and responsibility of the State through its legislature or other body, rather than of a federal court.").[1]

The federal court's refusal in this action to follow Germano and abstain from redistricting Minnesota's legislative and congressional districts while the state court action was proceeding has now resulted in two appeals. The first appeal resulted in this Court's January 10, 1992, summary vacation of the federal court's stay of the state court. The primary ground for reversal raised by appellants was the federal court's violation of Germano. It is obvious, however, that the federal court misunderstood the nature of this Court's summary vacation of the stay:

> When the Supreme Court dissolved the injunction, the purpose of the injunction had been fulfilled. An appellate court does not work in a vacuum without a record or briefs from both sides. To urge that the Supreme Court intended to decide the complex federalism issues we now address without a plenary record and hearing demeans the appellate process. App. A-24-25, n.26.[2]

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[1] Federal courts have repeatedly recognized the clear abstention doctrine established in Germano and have deferred to parallel state court redistricting proceedings. E.g., Bianchi v. Griffing, 393 F.2d 457, 461 (2d Cir. 1968); Badham v. March Fong Eu, 568 F. Supp. 156, 158 (N.D. Cal.), aff'd sub nom. Badham v. United States Dist. Court, 721 F.2d 1170 (9th Cir. 1983); Avens v. Wright, 320 F. Supp. 677, 686 (W.D. Va. 1970); Mahoney v. Burkhardt, 299 F. Supp. 787, 789 (D.N.J. 1969).

[2] Despite the federal court's observation, it is clear that a summary reversal order is appropriate for "situations in which the law is well-settled and stable, the facts are not in dispute, and the decision below is clearly in error." Schweiker v. Hansen, 450 U.S. 785, 791 (1981) (Marshall, J., dissenting). See generally R. Stern, E. Gressman & S. Shapiro, Supreme Court Practice ¶ 5.12 (6th ed. 1986).

Appellants are now before this Court again, and they again seek relief from a federal court order that ignores the plain language of Germano. In its order, the federal court offers two grounds for preempting the state court's redistricting responsibilities: the existence of unspecified independent federal issues and the court's belief that the state judicial process will cause undue delay. App. A-25. Neither reason supports the court's action.

The federal court's order refers to only one federal issue allegedly not present in the state court proceedings: the alleged Voting Rights Act violations. The federal court ignores, however, the fact that the state court itself initiated consideration of alleged Voting Rights Act violations by its order directing the parties to submit to it by October 7, 1991, any allegations that Chapter 246 violated the Voting Rights Act. No violations were asserted. App. A-241. On November 21, 1991, after reviewing Chapter 246, the state court expressly determined that the statute did not violate the Voting Rights Act. App. A-244.[3]

The federal court's presumption that the state court would not be able to redistrict in a timely fashion is also simply wrong. The state court legislative redistricting plan was published on December 9, 1991, and judgment was entered on January 30, 1992. Moreover, the judgment would have been entered much sooner but for the federal court's December 5, 1991, imposition of the stay. Having itself caused the delay, the federal court cannot now rely

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[3] To the extent the federal court believed that it had exclusive jurisdiction over the Voting Rights Act, the court was wrong. See Hathorn v. Lovorn, 457 U.S. 255, 269 (1982); see also Gulf Offshore Co. v. Mobil Oil Corp., 453 U.S. 473, 477-78 (1981) (concurrent state court jurisdiction presumed absent congressional provision to the contrary or disabling incompatibility).

on that delay to preempt the primary and rightful role of the state court.[4]

If a federal district court can adopt its own congressional redistricting plan while a state court is proceeding diligently to resolve a dispute between the Legislature and the Governor and adopt a plan of its own, there is no reason for the state court ever to begin. Affirmation of the district court's judgment would invite continued litigation of redistricting issues that have already been settled in the state courts and would discourage state courts from attempting to shoulder their share of the redistricting load.

Because Germano clearly dictates state court primacy in this action, and the federal court continues to misread Germano, this Court needs now to state unequivocally to the court below, and to other federal courts faced with parallel state court redistricting proceedings,[5] that states must be allowed to proceed with their own redistricting efforts. Only when it is clear that the state courts are unable to redistrict in time for an upcoming election should the federal courts attempt to assume redistricting responsibilities. This is not such a situation.

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[4] In its Procedural Order No. 7 issued March 3, 1992, the state court indicated its readiness to release a congressional redistricting plan subject only to the barrier posed by the federal court injunction which is the subject of this appeal. See App. A-440.

[5] Parallel state and federal actions are also pending in California, Illinois, Ohio, Pennsylvania, and Texas. See Table 5, App. A-391-392.

III. THE JUDGMENT OF THE MINNESOTA STATE SPECIAL REDISTRICTING PANEL IS ENTITLED TO FULL FAITH AND CREDIT

A. Final Judgment Has Been Entered In The State Court Action

On January 30, 1992, the state court judgment in Cotlow v. Growe became final. By virtue of the entry of the state court judgment the parties to the instant case are entitled to the benefits of the Full Faith and Credit Act, 28 U.S.C. § 1738.[6] The federal court was obligated to give the state court judgment the same full faith and credit that the judgment would have received in the Minnesota courts. Parsons Steel, Inc. v. First Alabama Bank, 474 U.S. 518, 525 (1986).

The state court's final judgment unanimously found that no violations of the Voting Rights Act were asserted. App. A-256. It also concluded that no such violations existed. App. A-259. That finding and that conclusion are final, subject only to review by the Minnesota appellate courts, and, ultimately, by this Court. Under Minnesota law, they are final unless appealed. State ex rel. Spratt v. Spratt, 150 Minn. 5, 7, 184 N.W. 31, 32 (1921); Simonds v. Norwich Union Indemnity Co., 73 F.2d 412, 416 (8th Cir. 1934), cert. denied, 294 U.S. 711 (1935). Thus, the federal court was precluded from reviewing the Voting Rights Act issue.

B. Appellees Are Collaterally Estopped From Challenging the State Court Judgment

In addition to the application of 28 U.S.C. § 1738, the parties to the federal court case are collaterally estopped from continuing

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[6] See App. A-374.

to raise the same issues that have necessarily been decided in Cotlow v. Growe, including Voting Rights Act issues. In Allen v. McCurry, 449 U.S. 90, 94 (1980), this Court stated: "Under collateral estoppel, once a court has decided an issue of fact or law necessary to its judgment, that decision may preclude relitigation of the issue in a suit on a different cause of action involving a party to the first case."

Under Minnesota law, the December 9, 1991 order is fully preclusive. In Minnesota, collateral estoppel precludes the relitigation of all issues already litigated in a prior action. Gollner v. Cram, 258 Minn. 8, 102 N.W.2d 521 (1960). The Minnesota Supreme Court has articulated four factors necessary to invoke this doctrine: 1) identical issue in prior suit; 2) final judgment on the merits; 3) estopped party was a party or in privity with party in prior suit; and 4) estopped party was given a full and fair opportunity to be heard on the adjudicated issue. Ellis v. Minneapolis Comm'n on Civil Rights, 319 N.W.2d 702 (Minn. 1982). All four factors support the application of collateral estoppel in this action. The issue raised is Section 2 of the Voting Rights Act, 42 U.S.C. § 1973b, as it applies to the state court legislative redistricting plan. The state court's judgment, entered January 30, 1992, including its conclusion that Chapter 246 contained no Voting Rights Act violations, is final until reversed. State ex rel. Spratt v. Spratt, 150 Minn. 5, 184 N.W. 31 (1921). Though the plaintiffs in Emison v. Growe were different persons than the plaintiff-intervenors in Cotlow v. Growe, privity exists because they represented the same issues, had the same attorney and both sought to advance the interests of the Independent Republican Party. See Montana v. United States, 440 U.S. 147, 154-55 (1979). All parties were given a full and fair opportunity to be heard in state

court on the Voting Rights Act issue.[7]

Therefore, based on the doctrines of Full Faith and Credit and collateral estoppel, the federal court erred in finding Voting Rights Act violations and issuing its own independent redistricting plans.

IV. THE CASE BEGUN BY APPELLEES IN THE FEDERAL COURT IS NOW MOOT

The Emison v. Growe federal court action was begun in March, 1991, approximately two months after the state court action had been commenced. By August 21, 1991, when the federal court issued its initial Order, the parties in the state court action had already stipulated that the legislative and congressional districts established in 1982 were unconstitutional and could not be used in the 1992 elections. App. A-192-195. Also, by August 21, 1991, the Minnesota state courts had ruled that Governor Carlson's attempted veto of Chapter 246 was invalid under the Minnesota Constitution and that Chapter 246 had been validly adopted. There was thus no reasonable expectation that the legislation complained of in Emison v. Growe (i.e., the old 1982 districts) would ever again be applicable to anyone. Sosna v. Iowa, 419 U.S. 393 (1975); Weinstein v. Bradford, 423 U.S. 147 (1975). Because the Emison case challenged only the old districts and did not challenge the districts created by Chapter 246, that case became moot. Los Angeles County v. Davis, 440 U.S. 625, 631 (1979) and cases cited therein.

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[7] The state court's Pre-Trial Order No. 3 asked the parties to address at a September 24, 1991, hearing the issue of whether Chapter 246 violated the Voting Rights Act. See App. A-216. At the hearing the parties all addressed that issue. App. A-219. The intervenors submitted a memorandum challenging the state court's jurisdiction to hear any Voting Rights Act issues. The state court ruled against them.

Thereafter, the Benson v. Growe case was commenced in federal court challenging the constitutional validity of newly enacted Chapter 246. On October 1, 1991, however, the state court found Chapter 246 to be unconstitutional, as adopted, under both the Minnesota and United States Constitutions. Pre-Trial Order No. 4. App. A-138, 139. At that point Benson v. Growe was rendered moot since Chapter 246, the only law that it had challenged, was declared invalid as adopted.

On January 10, 1992, this Court vacated the federal court's stay of the state court's proceedings. When the stay was lifted, the state court entered judgment on the legislative redistricting plan it had promulgated. Since the old districts had been declared invalid and new districts had been promulgated, subject only to Minnesota appellate review, both the Emison v. Growe and Benson v. Growe actions should have been dismissed as moot.

V. THE FEDERAL COURT'S FINDING THAT THE REDISTRICTING PLAN ADOPTED BY THE STATE COURT VIOLATES SECTION 2 OF THE VOTING RIGHTS ACT IS CLEARLY ERRONEOUS

The pretext for the federal court's preemption of the state's primacy in redistricting is the federal court's conclusion that a single senate district in Chapter 246 violates Section 2 of the Voting Rights Act, 42 U.S.C. § 1973. The federal court's finding in this regard is devoid of support either in law or fact. Indeed, no party ever alleged that Chapter 246 violated the Voting Rights Act.

A. The Federal Court's Finding is Contrary to Both the Language of Section 2 and This Court's Interpretation of the Statute

On its face, the complaint from which the federal court's

voting rights findings emanate fails to state a claim. The Emison complaint, the only one to have invoked the Voting Rights Act, alleges that because of shifts in population, the 1982 redistricting plan now dilutes minority voting rights in violation of Section 2. When Chapter 246, as modified by the state court, became law, however, it superseded the 1982 redistricting plan and any alleged voting rights violations under the prior plan became irrelevant. As Judge MacLaughlin points out in dissent:

> [N]o party to this suit has alleged, much less proved, that Chapter 246 violates section 2 of the Voting Rights Act; rather, plaintiffs have asserted only that their proposed plan "better" preserves the political power of minorities. There is no requirement, however, that a lawfully enacted reapportionment plan that complies with the Voting Rights Act be set aside in favor of an allegedly "better" plan. App. A-63.

Section 2 prohibits the legislature from adopting a redistricting plan which "results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color,..." The Voting Rights Act does not, however, require that districts be drawn to maximize the opportunity of minority voters to elect representatives of their choice. See Thornburg v. Gingles, 478 U.S. 30, 94 (1986) (O'Connor, J., concurring) (in enacting Section 2, Congress did not intend to provide minority voters with "maximum feasible minority voting strength").

In addition to the deficiencies in the Emison complaint, the federal court's findings are also deficient in that they fail to identify facts sufficient to satisfy the threshold requirement for a Voting Rights Act violation as articulated by this Court in Gingles. See id. at 48. This Court identified three circumstances as

necessary preconditions to a conclusion that a districting structure violated the Act: 1) the minority group has to be shown to be sufficiently large and geographically compact as to be able to constitute a majority in a single-member district; 2) the minority group has to be shown to be politically cohesive; and 3) the party challenging the plan or structure has to demonstrate that, absent special circumstances, bloc voting by the white majority in the challenged district usually defeats the minority's preferred candidate.[8] Id. at 50-51.

With respect to the first Gingles precondition, it is not possible to draw a geographically compact House or Senate district in Minnesota in which members of a single minority group would constitute a majority of the voting age population of the district. In drafting Chapter 246, both the House and Senate authors started by looking for areas in which members of a racial or language minority group were "sufficiently large and geographically compact to constitute a majority in a single member district." Gingles, 478 U.S. at 50. They found none. Even by lumping minority groups together within a district, the authors of the redistricting plan were able to create only three House districts in which combined groups of minority members constituted a majority of the total population.

[8] Although Gingles involved a challenge to a redistricting plan which created multimember districts in which two or more officials were elected at large, the same considerations that led this Court to articulate the Gingles threshold test apply as well in the context of redistricting plans involving single-member districts. As Judge MacLaughlin notes in his dissent, in the absence of any principled basis for distinguishing between challenges to multimember districting schemes and challenges to single-member districting schemes, numerous courts have concluded that the Gingles test applies to both types of voting rights challenges. See App. A-63-64.

See Table 1, App. A-380.[9]

Nor has the second precondition of Gingles been shown to exist in Minnesota. As other courts have recognized, it is difficult to demonstrate political cohesiveness within a single minority group, much less among members of different minority groups. See, e.g., Romero v. City of Pomona, 883 F.2d 1418, 1426 (9th Cir. 1989) (Blacks and Hispanics in Pomona found not to be politically cohesive). The record in this action is devoid of any evidence that the members of a single minority group are politically cohesive. More importantly, there are no facts to support a finding that different minority groups found within Minnesota are politically cohesive.

The third Gingles precondition also has not been shown to exist in Minnesota. There is no allegation, much less evidence, that non-minority voters vote as a bloc against candidates supported by minority voters.[10] Appellants submit that no such showing could be made.

The burden is on parties challenging a redistricting plan to show that all three of the Gingles requirements exist. No party to this action has alleged a Voting Rights Act violation with regard to Chapter 246 and so no party has attempted to show that the Gingles preconditions can be met. Accordingly, the Voting Rights

[9] The federal plan differs little in its provision for districts with significant minority populations. See Table 3, App. A-383-384. Indeed, the federal plan fails to create the super-majority minority district the federal court set out to achieve if one considers the voting age minority population.

[10] To the contrary, a comparison of the Official Directory of the Minnesota Legislature from 1969 to 1991 with the census counts of 1980 and 1990 shows that several "people of color" have been elected to the Minnesota legislature from districts having a white majority voting population in every election from 1968 through 1990.

Act issue must be resolved in favor of appellants. See McNeil v. Springfield Park Dist., 851 F.2d 937, 942 (7th Cir. 1988), cert. denied, 490 U.S. 1031 (1989).

B. The Federal Court's Finding Is Unsupported by Evidence in the Record

Even were the Gingles test not applicable here, the federal court's finding of a voting rights violation is without any factual support.[11]

In Gingles, before articulating the precise standard to be applied to Section 2 challenges to multimember districting plans, the Court identified certain overriding basic principles which it deemed generally applicable in considering voting rights cases.

> First, electoral devices . . . may not be considered per se violative of § 2. Plaintiffs must demonstrate that, under the totality of the circumstances, the devices result in unequal access to the electoral process. . . . Second, the conjunction of an allegedly dilutive electoral mechanism and the lack of proportional representation alone does not establish a violation. . . . Third, the results test [set forth in § 2 and its legislative history] does not assume the existence of racial bloc voting; plaintiffs must prove it. . . .

Gingles, 478 U.S. at 46. As Judge MacLaughlin concludes, the federal court majority disregards each of these three basic principles of voting rights jurisprudence.

The central focus of the federal court's voting rights finding is the failure by the legislature to create a super-majority minority senate district in Minneapolis. Indeed, as noted by Judge MacLaughlin, "The majority's holding is, in effect, a conclusion that a redistricting plan that does not contain a super-majority minority senate district in Minneapolis is an electoral device that is per se violative of Section 2." App. A-65. But see Table 3-2, App. A-383-384. Whatever the merits of creating a super-majority minority district may be, the absence of such districts may not be considered per se violative of Section 2 under the general principles articulated by this Court in Gingles.[12]

Nor has the federal court demonstrated that "under the totality of the circumstances," the absence of a super-majority minority district has resulted in unequal access to the electoral process for minorities. It is incredible that any conclusion about minority access to the electoral process could reasonably be drawn today from a provision of the Minnesota Constitution restricting voting rights to white people which was repealed more than a century ago. Similarly, judicial findings in two school desegregation cases from the 1970s cannot be presumed to reflect accurately the educational status of a minority population nearly 20 years after the implementation of court-ordered desegregation, let alone be deemed authoritative in predicting how the educational status of minorities in Minnesota has influenced their access to the electoral process. The federal court's reliance on a newspaper article reflecting performance gaps between minority and majority

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[11] As Judge MacLaughlin notes in his dissent, the majority reached its conclusions on the voting rights issues without having had the benefit of briefing or oral argument on the voting rights violations it purports to find. App. A-62, n.3. No evidentiary hearings were held on the voting rights issue and appellants were afforded no opportunity to address the "evidence" on which the federal court's finding of a voting rights violation turns.

[12] Leaders of the Black community in Minneapolis opposed the creation of a senate district of the type mandated by the federal court. See App. A-368.

students in Minneapolis is equally inappropriate. See also App. A-65.

That the state redistricting plan fails to pit incumbent Minneapolis state senators against each other also does not show that minority voters have been denied an equal opportunity to elect representatives of their choice absent evidence that the incumbent representatives have failed to represent minority interests.

Similarly, that the number of minority legislators from Minneapolis is not proportional to the percentage of minorities living in Minneapolis does not establish a violation of Section 2. As Judge MacLaughlin states, "Section 2 . . . specifically cautions against resting findings of voting rights violations on the lack of proportional representation. See 42 U.S.C. § 1973(b)." App. A-66. The federal court's inference that because the number of minority legislators from the City of Minneapolis is not proportional to the City's minority population, minority voters must necessarily have been denied an equal opportunity to elect the "representatives of their choice," 42 U.S.C. § 1973(b), is unwarranted. A piece of evidence essential to that conclusion, namely that minority voters, if given the opportunity to do so, would always choose a minority candidate over a non-minority candidate, is completely lacking in this case. As Judge MacLaughlin recognizes, in addition to being logically faulty, the federal court's conclusion violates the second principle of voting rights jurisprudence set forth in Gingles. App. A-66.

Finally, the federal court violates the third principle of voting rights jurisprudence by assuming, rather than requiring the plaintiffs to prove the existence of, racial bloc voting. The existence of racial bloc voting is, as Gingles recognizes, "a key element of a vote dilution claim." Gingles, 478 U.S. at 55. The federal court admits that the record contains no statistical data

attempting to correlate voting patterns with the race of voters and candidates. In lieu of specific statistical data, the federal court accepts as probative of the existence of racial bloc voting a sweeping generalization contained in a law review article that "racial bloc voting [is] all but inevitable in the vast majority of cases." App. A-67. Again, as Judge MacLaughlin notes, "The majority's assumption that racial bloc voting is 'all but inevitable' in this case . . . is precisely the assumption that the Supreme Court and the legislative history accompanying Section 2 forbid. The broad, generalized statements of commentators cannot substitute for evidence of racially polarized voting." App. A-67.

In short, the record contains no evidence to support a conclusion that the lack of super-majority concentrations of minorities in the past has deprived minorities of equal access to the political process or, more importantly, that the state's redistricting plan will lessen the opportunity of minorities to participate in the political process and to elect representatives of their choice in the future.

VI. THE FEDERAL COURT'S REMEDY VIOLATES ESTABLISHED PRECEDENT

As Judge MacLaughlin emphasizes in his dissent, even if the federal court correctly determined that a portion of the state court redistricting plan violates the Voting Rights Act, the federal court erred in redistricting the entire state along lines it finds preferable instead of following state policy as mandated by White v. Weiser, 412 U.S. 783 (1973) and Upham v. Seamon, 456 U.S. 37 (1982) (per curiam). See App. A-68. In Weiser, a federal court, faced with choosing between two redistricting plans, one of which was based on a defective state statute while the other was totally independent of the state law, chose the redistricting plan not based

on state law. 412 U.S. at 793-94. On appeal, the Court opined: "[A] federal district court, in the context of legislative reapportionment, should follow the policies and preferences of the State, as expressed in statutory and constitutional provisions." Id. at 795. Because the federal court had rejected the plan that was based on state law, the Court concluded it had erred. Id.

In this case, the Court is presented with almost the identical situation. The Minnesota Legislature has enacted Chapter 246, the state's redistricting law. Chapter 246 is the type of expression of state policy this Court contemplated in Weiser.[13] Just as in Weiser, the federal court in this case determined that Chapter 246 was flawed. However, just as in Weiser, the federal court chose to ignore Chapter 246 and the redistricting plan that tracked Chapter 246, and instead created a plan that is entirely independent of and inconsistent with Chapter 246.

Not only has the federal court ignored state policy as reflected in Chapter 246, it has also ignored state policy as reflected in the state court redistricting plan, which tracked Chapter 246 except where necessary to correct its technical deficiencies. Given this Court's express encouragement of such state court actions, see supra Part II, the federal court was not free to ignore the clear expression of state policy found in the state court redistricting plan. But that is exactly what it did.

The federal court's remedy is also flawed because it is far more drastic than is required. As the Court stated in Weiser, the remedial powers of an equity court are limited to the task at hand. 412 U.S. at 796. Upham v. Seamon, 456 U.S. 37 (1982) (per

[13] The federal court concluded that state policy was only found in the state constitution and a concurrent resolution of the Minnesota Legislature. App. A-43-44, 52. Chapter 246 is consistent with both of these. App. A-68.

curiam), specifically limits federal courts to redistricting only invalid districts. In Upham, this Court summarily reversed a federal district court order that had reapportioned both valid and invalid districts. In reversing, the Court relied heavily on Weiser and also stated that in the absence of a constitutional or Voting Rights Act violation a "district court's modifications of a state plan are limited to those necessary to cure any constitutional or statutory defect." Id. at 43 (emphasis added). See also Whitcomb v. Chavis, 403 U.S. 124, 160-61 (1971).

Here, the federal court was limited by Weiser and Upham to redistricting only those districts that purportedly are invalid. That easily could have been accomplished by adjusting some, and certainly less than all, of the eighteen Minneapolis legislative districts. Instead, the federal court chose to redistrict the entire state of Minnesota.

With respect to congressional redistricting, the plain language of Weiser directs federal courts to follow state policy in drawing congressional districts. See Weiser, 412 U.S. at 795. In this case, state congressional redistricting policy is reflected in S.F. 1597, which passed both houses of the state legislature.[14] The federal court once again, however, ignored state policy to create its own policy, one that it asserts achieves the lowest population deviations and is more compact. App. A-55. But under Weiser, consider-

[14] The federal court concluded that S.F. 1597 was not state policy because Governor Carlson vetoed it. Order at 48-49. The federal court relied on Duxbury v. Donovan, 272 Minn. 424, 432-33, 138 N.W.2d 692, 698 (1965), for this conclusion, but that case only addresses whether the governor has the power to veto a redistricting bill. Id. ("Our only duty in this situation is to decide whether the power to veto exists with respect to apportionment legislation."). Weiser, on the other hand, expressly addresses what constitutes state policy, namely, "statutory and constitutional provisions or . . . the reapportionment plans proposed by the state legislature." 412 U.S. at 795 (emphasis added).

ations of population equality and compactness alone "do not override whatever state goals were embodied in [the legislative enactment and a redistricting plan based on that enactment]." Id. at 796. Therefore, the federal court also violated White v. Weiser in congressional redistricting by ignoring clear state policy.

CONCLUSION

Appellants respectfully request this Court to note probable jurisdiction, summarily reverse the February 19, 1992, order and instruct the federal district court to refrain from acting unless and until it becomes clear that the state agencies will be unable to have redistricting plans in place in time for the upcoming elections. In the alternative, appellants respectfully request the Court to note probable jurisdiction and to hear this appeal on an expedited basis.

DATED: March 6, 1992.

Respectfully submitted,

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91-1420

No. _____

Supreme Court, U.S.
FILED
MAR 6 1992
OFFICE OF THE CLERK

In The
Supreme Court of the United States
October Term, 1991

Joan Growe, Secretary of the
State of Minnesota, et al.,
Appellants,

v.

James Emison, et al.,
Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

APPENDIX TO JURISDICTIONAL STATEMENT

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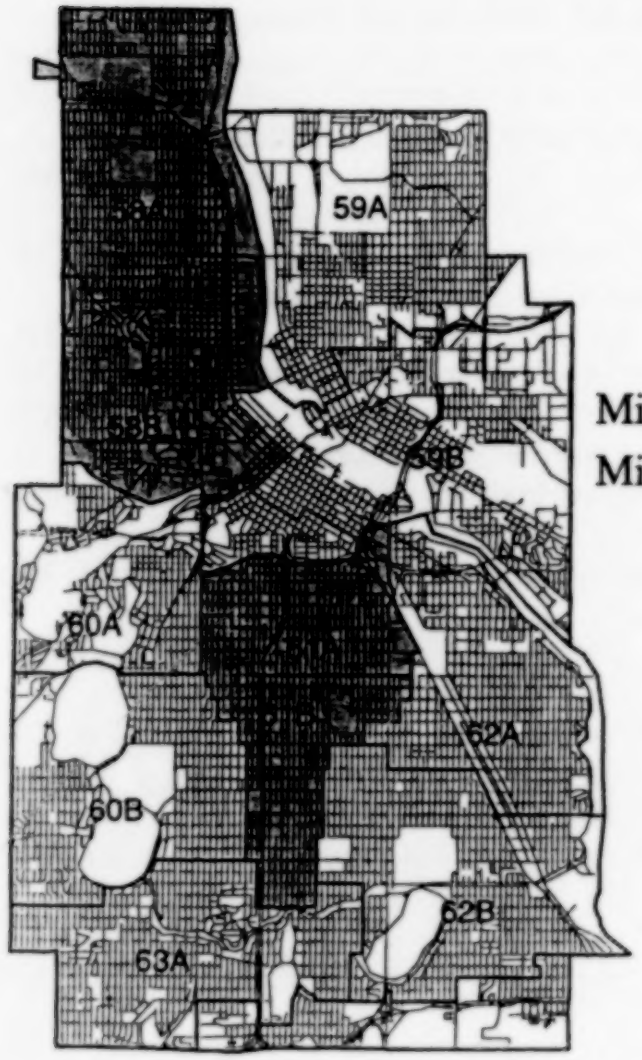
State - Legislative Plan

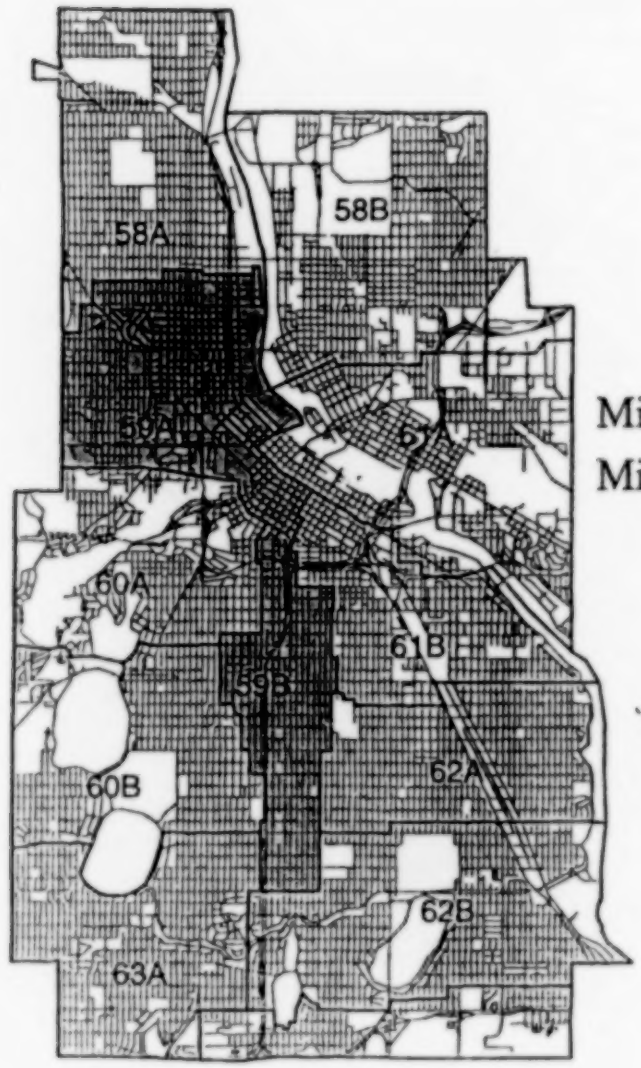
Enacted by Legislature on May 29, 1991
Approved, with corrections, by State Court on December 9, 1991



Minority Districts
Minneapolis

Federal Court - Legislative Plan

February 19, 1992



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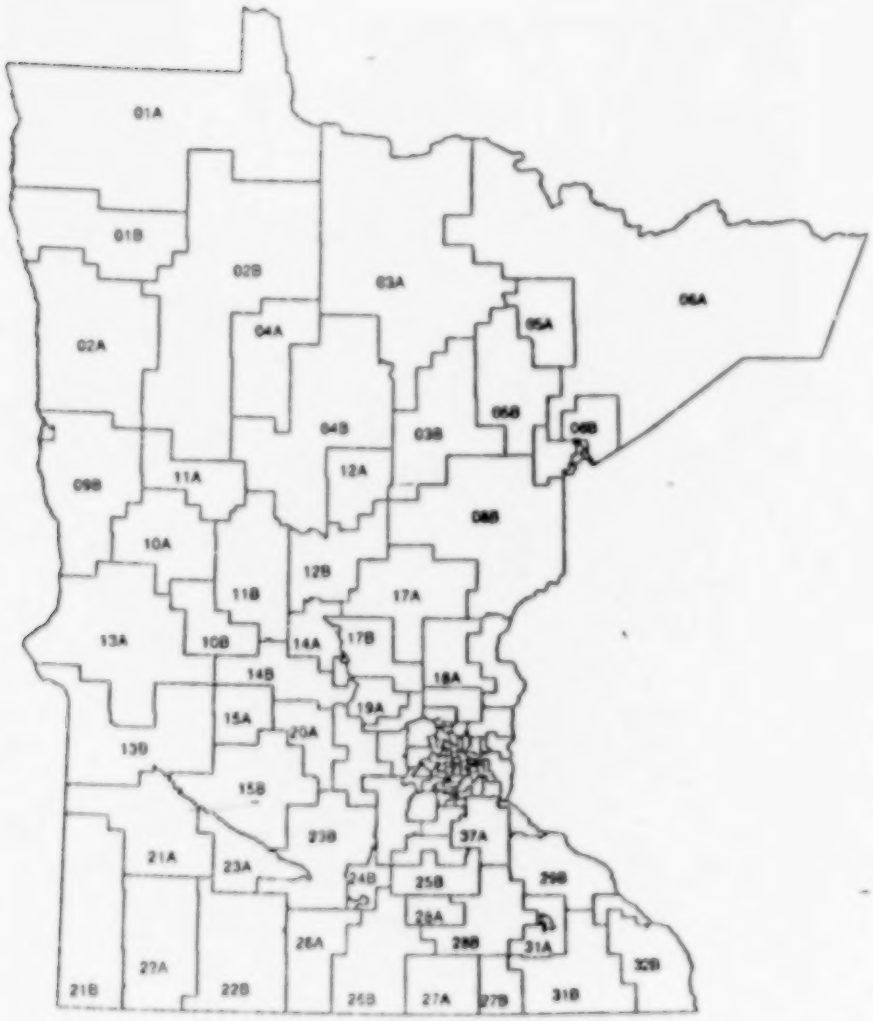

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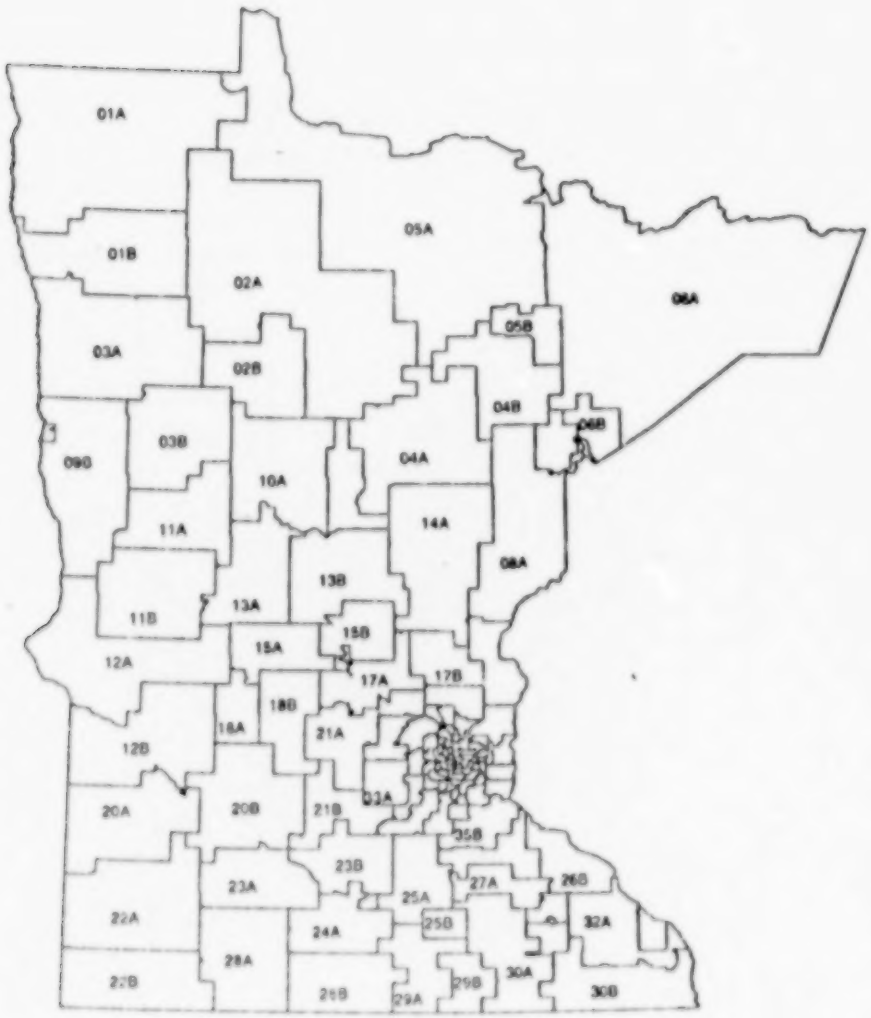
February 19, 1992



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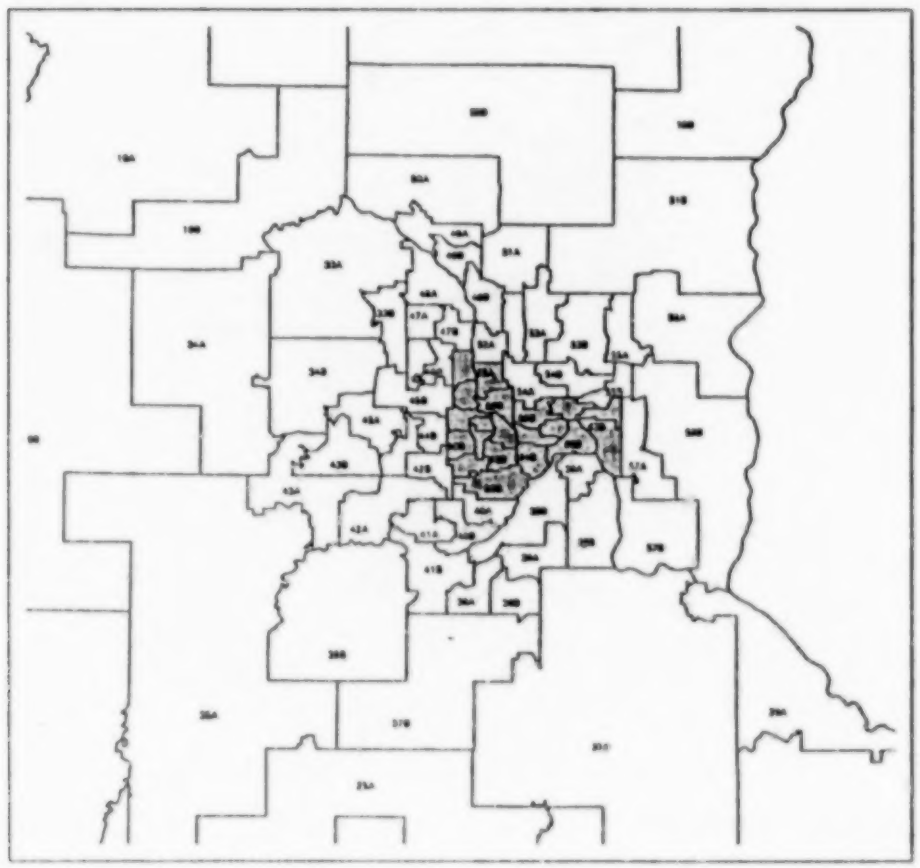
Twin Cities Metro Area
(Minneapolis and St. Paul Districts Shaded)



Federal Court - Legislative Plan

February 19, 1992

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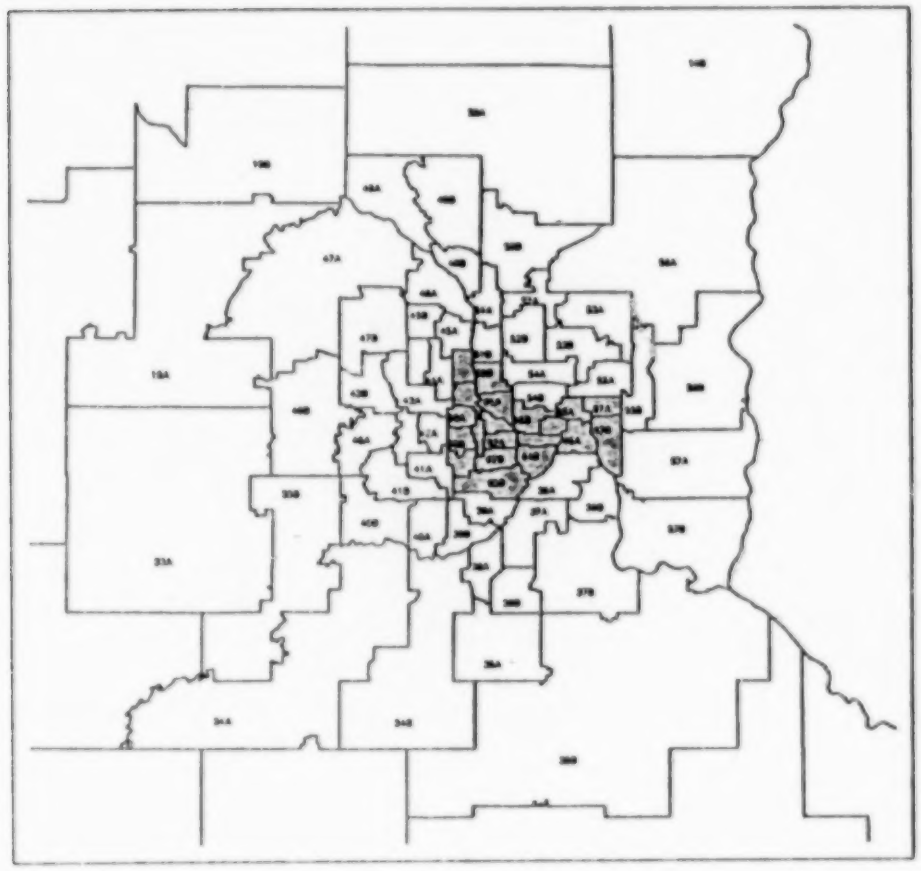


SF 1597 - Congressional Plan

Passed by Legislature on January 9, 1992

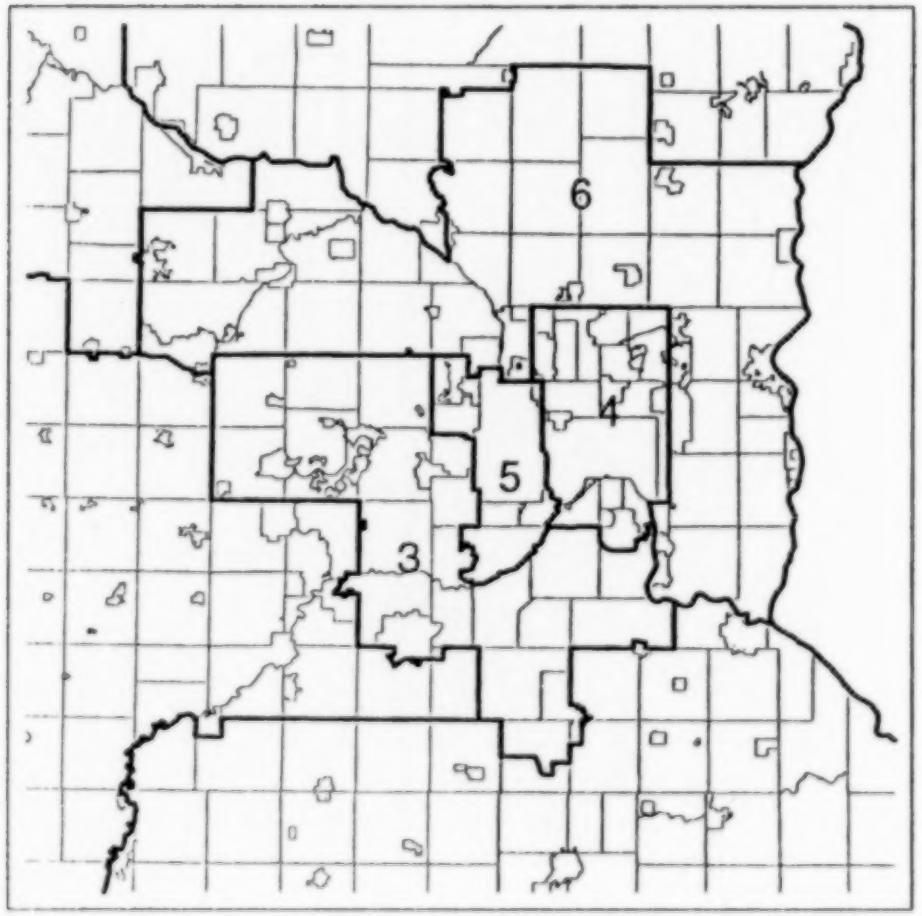
Federal Court - Congressional Plan

February 19, 1992

SF 1597 - Congressional Plan

Passed by Legislature on January 9, 1992

Twin Cities Metro Area



Federal Court - Congressional Districts

February 19, 1992

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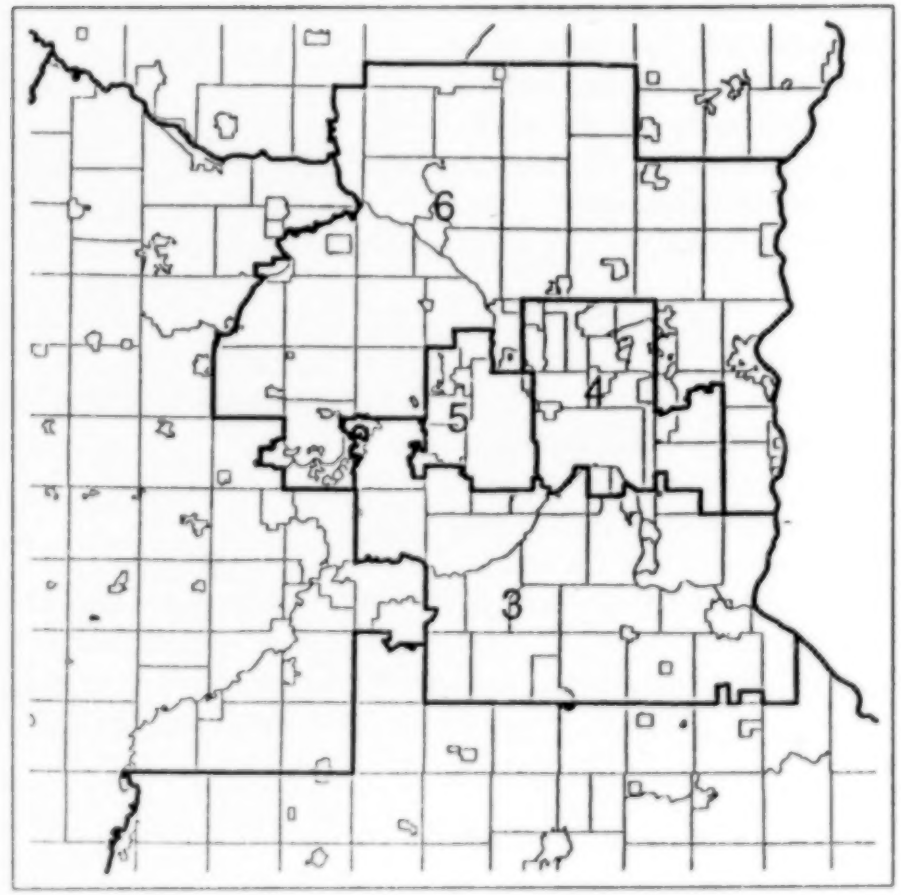

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

CIVIL #4-91-202

James Emison, Judy Fairbanks, Marie Iverson, Ken Dean, Steve Castillo, Lew Freeman, and Yao Lo, individually and on behalf of all Citizens and Voters of the State of Minnesota similarly situated,

Plaintiffs,

and

Patricia Cotlow, Phillip Krass, Sharon LaComb, James Stein, and Theodore Suss, individually and on behalf of all Citizens of Minnesota similarly situated,

Intervening Plaintiffs,

v.

Joan Growe, Secretary of State of the State of Minnesota; Mark Lundgren, Carver County Auditor, individually and on behalf of all County Auditors of the State of Minnesota,

Defendants,

MEMORANDUM OPINION

AND

ORDER

and

The Seventy-seventh Minnesota State House of Representatives; and the Seventy-seventh Minnesota State Senate,

Defendant Intervenors,

and

Patrick O'Connor, Hennepin County Auditor, individually and on behalf of all County Auditors of the State of Minnesota,

Defendant Intervenor.

AND

Duane Benson, Terry Dempsey, Delores Hettig, Richard Harmon, David E. Peterson, E.M. Patricia Pidcock, and Frank Ringsmuth,

Plaintiffs,

v.

Joan Growe, Secretary of State of the State of Minnesota,

Defendant,

and

Patrick O'Connor, Hennepin County
Auditor, individually and on
behalf of all County Auditors
of the State of Minnesota,

Defendant
Intervenor.

Before DONALD P. LAY, United States Circuit Judge, HARRY H. MacLAUGHLIN, United States District Judge, and PAUL A. MAGNUSON, United States District Judge.

BY DONALD P. LAY, United States Circuit Judge, and PAUL A. MAGNUSON, United States District Judge.

In 1982, this court established Minnesota's congressional districts, see LaComb v. Growe, 541 F.Supp. 145 (D. Minn.), aff'd sub nom. Orwoll v. LaComb, 456 U.S. 966 (1982), and Minnesota's state legislative districts, see LaComb v. Growe, 541 F.Supp. 160 (D.Minn. 1982), as reflected in Minnesota Statutes §§ 2.019, 2.042-2.702 (1983). At that time, this court also established minority concentrated districts in an attempt to preserve the voting strength of minority populations.

Over the last ten years, substantial population shifts from the northern part of Minnesota to the suburbs of the Twin Cities metropolitan area have resulted in great population disparities among the state's current legislative districts. For example, suburban Senate District 48 contains 104,235 people, while Senate District 6, in the northern part of the state, contains only 50,659

people.[1] Thirty-four of the sixty-seven senate districts deviate from the ideal population of 65,300 by 10% or more.[2] Eleven of the sixty-seven districts deviate from the ideal population by 20% or more.[3] The congressional districts exhibit serious disparity as well. For example, suburban Congressional District 3 contains 668,263 people, while District 2, located outside the metropolitan area, contains only 480,079 people.[4]

On March 18, 1991, James Emison, a Caucasian resident of Hennepin County; Judy Fairbanks, a Native American resident of the White Earth Reservation in Becker County; Marie Iverson, a Caucasian resident of Dakota County; Ken Dean, a Caucasian resident of Stearns County; Steve Castillo, a Hispanic resident of Ramsey County; Lew Freeman, an African-American resident of District 60B in south Minneapolis; and Yao Lo, an Asian resident of Ramsey County, brought this action in federal district court challenging the constitutionality of the 1982 congressional districts and the 1983 state legislative districts. The suit was brought

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[1] These figures are from the House District Population Report for 1990, dated July 30, 1991, distributed to the federal district court's Special Masters Panel by the Minnesota State Redistricting System Administrator on September 16, 1991. Pursuant to Fed. R. App. P. 10(e), any party desiring to file with the clerk of the court any materials distributed at that meeting is hereby authorized to do so within seven days.

[2] Id.

[3] Id.

[4] These congressional district population figures originate from the 1990 Census of Population and Housing data prepared by the United States Bureau of the Census. A stipulation of parties regarding this information was filed with the federal district court on October 10, 1991, and obtained for the court's use through the computer and accompanying programs provided by the State of Minnesota.

against Joan Growe, Secretary of State, and Mark Lundgren, Carver County Auditor, individually and on behalf of all Minnesota county auditors.

The Emison plaintiffs allege that the 1982 congressional districting laws violate Article 1, § 2 of the United States Constitution; and that the 1983 state legislative districting laws violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. The Emison plaintiffs further allege that the 1983 state legislative districting laws violate Section 2 of the federal Voting Rights Act, 42 U.S.C. § 1973 (1988).[5] They claim that these districting laws unnecessarily fragment the White Earth and Red Lake reservations into four separate legislative districts. The plaintiffs assert that such fragmentation minimizes, cancels out, and dilutes effective participation in the political process by Native Americans residing on or near those reservations, thereby denying them equal opportunity to elect or influence the election of representatives of their choice in violation of the Voting Rights Act. The Emison plaintiffs also allege that the legislative districts in the City of Minneapolis unnecessarily fragment the minority population into multiple districts so as to minimize, cancel out, and dilute the effective participation in the political process by minorities, thereby denying them equal opportunity to elect or influence the election of representatives of their choice in violation of the Voting Rights Act.

The plaintiffs ask the court for declaratory and injunctive

[5] In January, 1991, Patricia Cotlow and other plaintiffs brought an action in Hennepin County District Court challenging the constitutionality of the state legislative redistricting statutes, Minn. Stat. §§2.019, 2.042-2.702 (1990), and the congressional redistricting plan set forth in LaComb v. Growe, 541 F.Supp. 145 (D. Minn. 1982). See Cotlow v. Growe, No. C8-91-985 (Minn. Special Redistricting Panel filed Jan., 1991). This complaint did not allege any violation of the Voting Rights Act under 42 U.S.C. § 1973.

relief barring the use of the districts for future elections. They also seek the adoption of new districts that consolidate the White Earth and Red Lake Reservations in a single legislative district, as well as consolidate minority populations in south Minneapolis with adjacent or nearby minority populations.

This court has subject matter jurisdiction under Title 28 U.S.C. § 1343,[6] as well as under Title 28 U.S.C. § 1331 and Title 42 U.S.C. § 1973.[7]

[6] Title 28 U.S.C. § 1343 provides in relevant part:

> (a) The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:
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> (3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;
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> (4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote.

28 U.S.C. § 1343(a)(3) and (4)(1988).

[7] Title 42, U.S.C. § 1331(a) reads as follows:

> The district court shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

28 U.S.C. § 1331(a) (1988)

Title 42, U.S.C. § 1973(a) states:

> No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement or the right of any citizen or the United States to vote on account of race or color . . . .

42 U.S.C. § 1973(a) (1988).

On April 8, 1991, a three-judge district court panel was designated pursuant to 28 U.S.C. § 2284(a) (1988).[8] On May 16, 1991, a motion to intervene in this action was granted to the Seventy-seventh Minnesota State House of Representatives and State -Senate (hereafter referred to as the defendant intervenors).[9]

Once convened, the jurisdiction of a three-judge panel under 28 U.S.C. § 2284(a) "extends to every question involved, whether of state or federal law, and enables the court to rest its judgment on the decisions of such of the questions as in its opinion effectively dispose of the case." Armour v. State of Ohio, 775 F.Supp. 1044, 1048 (N.D. Ohio 1991) (quoting Sterling v. Constantin, 287 U.S. 378, 393-94 (1932)). Accordingly, this court now addresses the issues we must consider in affording complete relief to the plaintiffs. To this end, we adopt state legislative and congressional redistricting plans prepared by the court with the assistance of a

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[8] Title 28 U.S.C. § 2284(a) reads as follows:

> (a) A district court of three judges shall be convened when otherwise required by Act of Congress, or when an action is filed challenging the constitutionality of the apportionment of congressional districts or the apportionment of any statewide legislative body.

In June, 1991, the Chief Justice of the Supreme Court of Minnesota assigned the Cotlow action to a three-judge court under his general constitutional authority to move and transfer judges from one district to another. See Minn. Stat. § 2.724, subd. 1 (1991).

[9] Throughout this litigation the Emison plaintiffs and the Benson plaintiffs, infra, have represented the interests of the Independent-Republican (IR) political party. The legislative intervenors represent the interests of the Democratic-Farmer-Labor (DFL) political party. The Cotlow intervenors are aligned with the interests of the defendant intervenors. For purposes of identification within this opinion, we refer only to the parties as the Emison plaintiffs, the State, and the defendant intervenors.

Special Masters panel,[10] which are attached to this opinion as Sections II and IV.

On May 18, 1991, the Minnesota Legislature passed a state legislative redistricting bill, Chapter 246. The enrolled bill was presented to Governor Arne H. Carlson on May 24, 1991, who vetoed the legislation on May 28, 1991. A suit was thereafter commenced in the Ramsey County District Court alleging the Governor's veto was not effective because it had not been delivered to the legislative house of origin within the time required by the Minnesota Constitution.[11] The state district court ruled on August 2, 1991, that the Governor's veto was ineffective. The Governor did not appeal this ruling, and Chapter 246 became law. On August 9, 1991, a separate suit was commenced in federal district court challenging the constitutionality of Chapter 246.[12] This court subsequently consolidated the Emison and Benson cases.[13]

On August 21, 1991, this court unanimously entered an order which denied a motion to enjoin the state district court proceedings, granted a motion to defer its own proceedings pending further legislative action, and denied a motion to abstain

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[10] On August 27, 1991, the three-judge federal district court panel appointed three Special Masters, pursuant to Fed. R. Civ. P. 53, in order to assist the court in evaluating the redistricting issues presented.

[11] See The Seventy-seventh Minnesota State Senate and Seventy-seventh Minnesota State House of Representatives v. Carlson, No. C3-91-7547 (Ramsey County Dist. Ct. Aug. 2, 1991).

[12] Benson v. Growe, No. 4-91-603 (D. Minn. filed Aug. 9, 1991).

[13] Emison, No. 4-91-202 (D. Minn. Sept. 25, 1991) (Order Establishing Master Docket).

pending further state court proceedings.[14] In doing so, we were guided by the opinion of the Supreme Court in Scott v. Germano, 381 U.S. 407 (1965), which stated that a federal district court should not prematurely adopt a redistricting plan of its own, but should

> enter an order fixing a reasonable time within which the appropriate agencies of the State of Illinois, including its Supreme Court, may validly redistrict the Illinois State Senate; provided that the same be accomplished within ample time to permit such plan to be utilized in the 1966 election . . . .
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> The District Court shall retain jurisdiction of the case and in the event a valid reapportionment plan for the State Senate is not timely adopted it may enter such orders as it deems appropriate, including an order for a valid reapportionment plan . . . .

381 U.S. at 409. Our order recognized that Germano rests the primary responsibility for redistricting with the state legislative process.[15] Counsel for the defendant intervenors represented to

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[14] Emison, No. 4-91-202 (D. Minn. Aug. 21, 1991) (Memorandum and Order at 10-11).

[15] In discussing the state legislative process, the Minnesota Supreme Court has recognized:

> Our court read U.S. Const. art. I, § 4, as delegating a Federal responsibility to an entity, i.e., the legislature which consists of the House of Representatives and the Senate. The United States Supreme Court, final arbiter of the meaning of the Federal Constitution, construed art. I, § 4, as assigning the task of redistricting for the purpose of Federal elections not to an entity but to a process, that is, the process by which statutory law is made in the particular state exercising the delegated authority. It is this point of divergence in thinking as between the Minnesota Supreme Court and the United States Supreme Court which accounts for the difference in result. It is correct that the entity described by the words "the legislature" in the State of Minnesota consists of the House of Representatives and the Senate and does not include the governor. The process which is involved in the enactment of statutory law involves exercise of power delegated to the legislature as an entity either by a majority vote of each house or by a two-thirds majority of each house depending on whether the governor approves or disapproves of the legislation enacted.

Duxbury v. Donovan, 272 Minn. 424, 432-33, 138 N.W.2d 692, 698 (1965) (discussing Smiley v. Holm, 285 U.S. 355 (1932)).

this court in August, 1991, that the legislature planned amend Chapter 246 and pass a congressional plan when the session reconvened in January, 1992. Following the principles of Germano, this court thus deferred to the state agencies in order to allow them every opportunity to pass a redistricting law no later than January 20, 1992.[16]

This court refused to abstain, however, and we retained jurisdiction over the case for two reasons. First, we recognized that this court's jurisdiction was invoked under the Voting Rights Act. Proof of a violation could directly affect any state redistricting plan that might be adopted.[17] Second, this court determined

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[16] Emison, No. 4-91-202 (D. Minn. Aug. 21, 1991) (Memorandum and Order at 10-11).

[17] In our order of August 21, 1991, we noted that the federal complaint contained issues relating to the Voting Rights Act, whereas the state court action in Cotlow did not. In refusing to send the minority plaintiffs to state court we adhered to fundamental principles governing abstention in voting rights cases. The Supreme Court has observed:

> "[R]ecognition of the role of state courts as the final expositors of state law implies no disregard for the primacy of the federal judiciary in deciding questions of federal law." England v. Louisiana State Board of Medical Examiners, 375 U.S. 411, 415-16.
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> . . . .

that the state court's appellate process would take too long to allow a valid plan to be approved and implemented in time for the 1992 election.

All parties agreed that a redistricting plan should be implemented in early February, and in any event no later than March 1, 1992. This court was cognizant that if the state district court issued a final opinion after the legislature recessed in January, 1992, and appeal to the Supreme Court of Minnesota would likely not be completed by March 1, 1992.[18]

We concluded that if the state legislative process failed to adopt a redistricting plan by January 20, 1992, this court would

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> "[T]he right to vote freely for the candidate of one's choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government." Reynolds v. Sims, 377 U.S. 533, 555. The right is fundamental "because preservative of all rights." Yick Wo v. Hopkins, 118 U.S. 356, 370. . . . Given the importance and immediacy of the problem, and the delay inherent in referring questions of state law to state tribunals, it is evident that the District Court did not abuse its discretion in refusing to abstain. Griffin v. County School Board of Prince Edward County, 377 U.S. 218, 229; Baggett v. Bullitt, 377 U.S. 360, 375-379.

Harman v. Forssenius, 380 U.S. 528, 535, 537 (1965) (footnote omitted); see also Badham v. United States Dist. Court for the N. Dist. of Cal., 721 F.2d 1170, 1173 (9th Cir. 1983) ("The dangers posed by an abstention order are particularly evident in voting cases. . . . 'other rights, even the most basic, are illusory if the right to vote is undermined.'") (quoting Wesberry v. Sanders, 376 U.S. 1, 17 (1964)); Edwards v. Sammons, 437 F.2d 1240, 1244 (5th Cir. 1971) (indicating that delay caused by abstention is not to be countenanced in cases involving the right to vote).

[18] When a final judgment is entered in the state court proceedings the parties have ninety days in which to take an appeal. Minn. R. App. P. 104.01 (1991). At the time this order is entered, the state district court has not issued a final order as to any congressional redistricting. As a result, the time to appeal a congressional plan in the state court conceivably will not expire until late May of 1992.

then be obligated to review the allegations under the Voting Rights Act, and if necessary provide equitable relief by adoption of its own plan.[19] We recognized that in the event the state agencies did not act, the development of a plan and an appropriate order would require additional time. Contingent upon any eleventh hour action of the legislature, we appointed the three Special Masters to assist this court in studying and ascertaining the constitutionality of all plans proposed.[20]

On November 21, 1991, the state district court issued a preliminary order for state legislative redistricting.[21] The court declared, however, that it would not implement its plan if the legislature passed a redistricting plan in January, 1992. Despite the contingent nature of the state district court's plan, it announced, "by proceeding as swiftly as possible, we intend to provide any time necessary for an orderly appeal process and to avoid any duplicative litigation in the federal courts."[22] The state district court simply adopted, with a few modifications, S.F. 1596, which represents the DFL legislative party's amended plan of Chapter

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[19] Emison, No. 4-91-202 (D. Minn. Aug. 21, 1991) (Memorandum and Order at 10-11).

[20] Since our order of appointment in August of 1991, the masters have expended approximately 1500 hours in the complex review of all plans.

[21] Cotlow, No. C8-91-985 (Minn. Special Redistricting Panel Nov. 21, 1991) (Findings of Fact, Conclusions of Law, and Preliminary Order for Judgment on Legislative Redistricting).

[22] Id.

246.[23] This was, as will be discussed, essentially the same plan which was on January 9, 1992, passed by the legislature but vetoed by the Governor.

By issuing its plan prior to the anticipated legislative redistricting action in January, 1992, we deemed it self-evident that the existence of the state district court plan could improperly influence and interfere with the legislative process. The premature issuance of such a plan prevented the occurrence of any possible compromise or negotiation which might have brought a divided state government to some form of agreement on redistricting. This court also was apprehensive about the apparent finality of the state court proceedings at that time, believing that meaningful review of the federal voting rights claims asserted only in the federal proceedings would be prevented. For these reasons, this court enjoined all further state proceedings and stayed the effect of the orders issued by the state district court in Cotlow.[24]

On December 9, 1991, the state district court proceeded to adopt its legislative redistricting plan,

> subject to the stay issued by the United States District Court in Emison v. Growe, No. 4-91-202 (D.Minn. Dec. 5, 1991), and in conformity with Minn. R. Civ. P. 54.02 the following reapportionment of the Minnesota Legislature shall be final and effective beginning with the 1992 primary and general elections, unless a constitutional plan is enacted by the State of Minnesota.

Cotlow, No. C8-91-985 (Minn. Special Redistricting Panel Dec. 9, 1991) (Findings of Fact, Conclusions of Law, and Order for Judgment on Legislative Redistricting at 12). The court did not order any injunctive relief.[25] Id. at 12-13.

On January 9, 1992, the Minnesota legislature passed amendments which special legislative redistricting committees had worked on since August, 1991. Senate File 1596. These were presented to the legislature in an attempt to cure the infirmities alleged to exist in Chapter 246. The legislature also passed a congressional redistricting plan on the same date. Senate File 1597. Governor Carlson promptly vetoed both redistricting bills on January 9, 1992.[26]

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[23] In its Pretrial Order No. 4, the state district court panel adopted an additional criterion for evaluating proposed redistricting plans, stating that all plans must follow the contours of the previously declared unconstitutional Chapter 246. Cotlow, No. C8-91-985 (Minn. Special Redistricting Panel, Oct. 1, 1991) (Pretrial Order No. 4, at 8). Upon the announcement of the adoption of this criterion, a state legislative aide to the Democratic-Farmer-Labor party felt compelled to proclaim, "It's all over. We won." Robert Whereatt, DFL Wins Round in Redistricting Fight, Minneapolis Star Tribune, Oct. 2, 1991, at 3Be.

[24] Emison, No. 4-91-202 (D. Minn. Dec. 5, 1991) (Order of Stay of All Proceedings Before the Minnesota Special Redistricting Panel in Cotlow v. Growe, No. C8-91-985).

[25] At the time this opinion is released, it appears the state district court order of December 9, 1991, adopting a state legislative redistricting plan is not yet a final order. Minnesota Rule of Civil Procedure 54.02 provides:

> the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment.

The Supreme Court of Minnesota has held that when a trial court issues an order disposing of fewer than all claims of all parties and does not make an "express determination that there is no just reason for delay," Pederson v. Rose Co-Op. Creamery Ass'n, 326 N.W.2d 657, 660-61 (Minn. 1982), the order does not become final and is subject to revision at any time prior to entry of judgment adjudicating all claims and is therefore not appealable of right. Id.

[26] On January 10, 1992, after the legislature had acted and the Governor had vetoed the legislation, the United States Supreme Court vacated our order of December 5, 1991, lifting the injunction on the Cotlow parties and dissolving the stay as to the state court orders. Cotlow v. Emison, No. 91-1084 (Supreme Court

In addressing this issue of redistricting, we emphasize that this court does not sit in judgment as an appellate court for the state district court. Thus, our review is not of the state district court action. We also recognize that if any error was made by this court on August 21, 1991, in refusing to abstain because of the voting rights allegations existing in the federal complaint, or if we abused our discretion in adopting January 20, 1992, as the time frame in which the state agencies could act to adopt a valid redistricting plan, then by our action today the parties are well aware that appeal to the Supreme Court of the United States will initiate consideration and any necessary correction of perceived mistakes.

This court fully recognizes the deference that should be given to state courts in state redistricting proceedings. However, where federal issues exist independently and the state judicial processes will cause untimely delay, both Scott v. Germano and Harman v. Forssenius, 380 U.S. 528 (1965), place the primary obligation on a federal court to act. A state's supreme court is, and should be, the final arbiter of claims resting on state law. Likewise, state courts may resolve federal statutory and constitutional issues, at least where Congress has not committed such matters to the exclusive jurisdiction of the federal courts. It is

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of the United States Jan. 10, 1992) (Order dissolving injunction). The defendant intervenors now urge that the dissolution of the injunction by the Supreme Court implicitly calls for this court to abstain from further action and allow the state court to proceed. We disagree. As set forth in our order of December 5, 1991, the narrow purpose of the injunction was to prevent finality of the state court action prior to the time the legislature acted. When the Supreme Court dissolved the injunction, the purpose of the injunction had been fulfilled. An appellate court does not work in a vacuum without a record or briefs from both sides. To urge that the Supreme Court intended to decide the complex federalism issues we now address without a plenary record and hearing demeans the appellate process.

equally true, however, that the United States Supreme Court is the final arbiter of federal statutory and constitutional law. As we have previously indicated, "recognition of the role of state courts as the final expositors of state law implies no disregard for the primacy of the federal judiciary in deciding questions of federal law." Harman v. Forssenius, 380 U.S. at 535 (quoting England v. Louisiana State Bd. of Medical Examiners, 375 U.S. 411, 415-16 (1964)).

We now turn to the issues of redistricting on both the state and congressional level. We initially address plaintiffs' complaint relating to violation of the Voting Rights Act.

Voting Rights Act

Generally, Section 2 of the Voting Rights Act prohibits a state from using any standard, practice or procedure in a manner which results in the denial or abridgement of the right to vote on account of race or color.[27] The practice the Emison plaintiffs challenge relates to the legislative district boundaries near the Red Lake and White Earth reservations and in the City of Minneapolis. The Emison plaintiffs urge us to create a supermajority senate district in Minneapolis which combines the substantial minority populations from the near north side with the minority populations

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[27] Section 2(a) of the Voting Rights Act states:

> No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in Section 1973b(f)(2) of this title (relating to language minorities), as provided in subsection (b) of this section.

42 U.S.C. § 1973(a) (1988).

in central and south Minneapolis.

Section 2 goes on to explain how a party establishes that a practice results in an illegal abridgement of the right to vote. A violation of Section 2(a) occurs if, in the totality of the circumstances, the political processes leading to nomination or election are not equally open to participation by members of a protected class. This lack of equal access exists if minority members have "less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." 42 U.S.C. § 1973(b) (1988). The statute provides that the extent to which minority members have been elected to office may be considered in determining whether a violation has occurred, but also provides there is no right to have members of the protected class elected in numbers equal to their proportion in the population.[28]

We initially recognize that "any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized." Reynolds v. Sims, 377 U.S. 533, 562 (1964). We

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[28] Section 2(b) of the Voting Rights Act states:

> (b) A violation of subsection (a) of this section is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) of this section in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: Provided, That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.

42 U.S.C. § 1973(b) (1988).

are further guided by the Supreme Court's admonition that the Voting Rights Act "should be interpreted in a manner that provides 'the broadest possible scope' in combatting racial discrimination." Chisom v. Roemer, 111 S. Ct. 2354, 2368 (1991) (quoting Allen v. State Board of Elections, 393 U.S. 544, 567 (1969)).

First we address the argument that plaintiffs' claims are precluded by the reasoning of Thornburg v. Gingles, 478 U.S. 30 (1986). In doing so, we deem it essential to make clear that the fundamental issue we face is whether voting rights violations have been proven in this case. The question is not whether any given plan complies with the Voting Rights Act. Nothing in the Voting Rights Act alters the traditional allocation of the burden of proof among the parties. To investigate whether a voting rights violation exists, it is necessary to review proffered evidence, and inferences therefrom, to determine whether boundary drawing practices may have abridged the rights of minority voters.

Gingles was an action brought by black voters of North Carolina challenging the use of one single-member district and six multimember districts in the state's legislative redistricting plan, claiming that such a plan impaired the ability of black citizens to elect representatives of their choice in violation of Section 2 of the Voting Rights Act. The Gingles court said that plaintiffs challenging multimember districting must establish that 1) the minority group is sufficiently large and geographically compact to constitute a majority in a single member district; 2) the minority group is politically cohesive; and 3) the white majority votes sufficiently as a block to enable it -- in the absence of special circumstances, such as the minority candidate running unopposed -- usually to defeat the minority's preferred candidate. Id. at 50-51.

It is important to note that Gingles involved a challenge to multimember districts with a request for relief requiring the state

to convert entirely to single-member districts. The Gingles court was careful to disclaim any intention to set standards for a dilution claim involving a single member districting scheme:

> We also note also that we have no occasion to consider whether the standards we apply to respondents' claims that multimember districts operate to dilute the vote of geographically cohesive minority groups that are large enough to constitute majorities in single-member districts and that are contained within the boundaries of the challenged multimember districts, are fully pertinent to other sorts of vote dilution claims, such as a claim alleging that the splitting of a large and geographically cohesive minority between two or more multimember or single-member districts resulted in dilution of the minority vote.

Id. at 47 n. 12 (emphasis added). It is the latter type of claim plaintiffs make here, i.e., that the splitting of a large and geographically cohesive minority between two or more single-member senate districts in Minneapolis results in dilution of the minority vote. The disclaimer in Gingles says that the Supreme Court has not decided whether the preconditions apply to the sort of claim plaintiffs advance here.[29]

Perhaps more importantly, recent Supreme Court decisions

[29] It is arguably inappropriate to apply the Gingles preconditions to a claim that a boundary placement in single-member district scheme improperly dilutes the minority vote. A challenge to multimember districts seeking a forced conversion to single-member districting involves a structural change in the electoral system chosen by the state. The change needed to provide relief in this case is considerably less drastic. All agree here that single-member districting is appropriate. The question is only where particular boundaries should be drawn. See also Armour v. State of Ohio, 775 F.Supp. 1044, 1050-52 (N.D. Ohio 1991).

reject the use of judicially created limitations to restrict coverage under Section 2. In Chisom v. Roemer, the court stated that

> (e]ven if serious problems lie ahead in applying the "totality of circumstances" described in § 2(b), that task, difficult as it may prove to be, cannot justify a judicially created limitation on the coverage of the broadly worded statute, as enacted and amended by Congress.

111 S.Ct. at 2368. The limits on the Voting Rights Act urged by the defendant intervenors, were we to apply them here, would be "judicially created limitation[s]" on the scope of Section 2 which are impermissible under Chisom.

Other courts also have held that the Gingles preconditions for challenging multimember districting do not apply to all Section 2 challenges. See Armour v. State of Ohio, 775 F.Supp. 1044, 1050-52 (N.D. Ohio 1991) (plaintiffs need not prove the first Gingles precondition that the minority is a large enough population to constitute a majority in a single-member district).

In light of the disclaimers in footnote 12 of Gingles and the Supreme Court's subsequent comments in Chisom, we do not view the three Gingles preconditions as dispositive in this case.[30]

[30] There is proof that the minority population has been fragmented and that it is sufficiently large and concentrated to form a majority in a single-member senate district. The record contains no statistical evidence, however, that the minority group is politically cohesive and that bloc voting operates to defeat minority preferred candidates. As commentators have noted, however, "many of the factors the Act deems important evidence of unequal access to the political process, . . . such as racial block voting and the lingering effects of discrimination, are all but inevitable in the vast majority of cases." Howard & Howard, The Dilemma of the Voting Rights Act -- Recognizing the Emerging Political Equality Norm, 83 Colum. L. Rev. 1615, 1625 (1983).

The Totality of the Circumstances

Rather than mechanically apply the preconditions of Gingles, we look to the totality of the circumstances, as required by Section 2, and consider the factors listed in the Senate Judiciary Committee Report accompanying the bill that amended Section 2 in 1982. S. Rep. No. 417, 97th Cong., 2d Sess. 28-29 (1982), reprinted in 1982 U.S.C.C.A.N. 177, 206-207. This report elaborates on the circumstances that may be probative of a Section 2 violation, noting the following "typical factors":

> 1. the extent of any history of official discrimination in the state or political subdivision that touched the right of the members of the minority group to register, to vote, or otherwise to participate in the democratic process;
> 2. the extent to which voting in the elections of the state or political subdivision is racially polarized;
> 3. the extent to which the state or political subdivision has used unusually large election districts, majority vote requirements, anti-single shot provisions, or other voting practices or procedures that may enhance the opportunity for discrimination against the minority group;
> 4. if there is a candidate slating process, whether the members of the minority group have been denied access to that process;
> 5. the extent to which members of the minority group in the state or political subdivision bear the effects of discrimination in such areas as education, employment and health, which hinder their ability to participate effectively in the political process;
> 6. whether political campaigns have been characterized by overt or subtle racial appeals;
> 7. the extent to which members of the minority group have been elected to public office in the jurisdiction.
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> Additional factors that in some cases have had probative value as part of plaintiffs' evidence to establish a violation are:
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> whether there is a significant lack of responsiveness on the part of elected officials to the particularized needs of the members of the minority group.
>
> whether the policy underlying the state or political subdivision's use of such voting qualification, prerequisite to voting, or standard, practice or procedure is tenuous.

Id.

The record in this case is silent on many of the factors that a court may consider in evaluating a Section 2 claim. However, this silence cannot be considered as evidence rebutting the plaintiff's claim. The Senate Report makes this point clear. "The failure of plaintiff to establish any particular factor, is not rebuttal evidence of non-dilution." S. Rep. No. 417 at 29 n.118, 1982 U.S.C.C.A.N. at 207 n.118.

The Senate Report states that "there is no requirement that any particular number of factors be proved, or that a majority of them point one way or the other." S. Rep. No. 417 at 29, 1982 U.S.C.C.A.N. at 207. We are also mindful that redistricting is one of the major concerns of the Act. Even when changes are made for valid reasons, a jurisdiction may not always take appropriate care to avoid discriminating against minority voters in the process. S. Rep. No. 417 at 12 n.31, 1982 U.S.C.C.A.N. at 189 n.31.

In the present case, plaintiffs urge that certain historical facts, and the inferences to be drawn therefrom, establish a prima facie case of violations under the Voting Rights Act. As a result,

this court makes the following findings of fact.

First, it is undisputed on the record that the Minnesota State Senate currently has no minority members from Minneapolis, nor has a minority member been elected to the state senate from Minneapolis in recent history. These are factors we may consider under the express language of Section 2: "The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered . . . ." 42 U.S.C. § 1973(b) (1988). This is the only factor Congress chose to expressly mention in the statute. As noted in LaComb v. Growe, 541 F. Supp. 160, 164 (1982), Minnesota's only African-American legislator in 1982 was a house member from Minneapolis. We were advised by counsel at a hearing on October 11, 1991, that there is now only one minority house member from Minneapolis, although three other minorities have been elected to the legislature from other areas in Minnesota. The Legislative Manuals (1980-1990) published by the State confirm that only two minority members have been elected to the house from Minneapolis in the past decade, and both were elected from the same district (designated as House District 57B in the 1982 plan).

Second, the most concentrated senate district in Minneapolis under the districts established in 1982, Senate District 60, contained 47.5% total minorities.[31] This concentration failed to elect a minority member to the senate in the last election. The senate districts established in 1982 do not contain super-majority minority concentrations, with the result that there are no minority senators.

[31] This information is from the Minority Population Report, dated August 20, 1991, provided to the Special Masters at the September 16, 1991 meeting with the parties' counsel.

The results of elections under the 1982 districts, with no super-majority minority senate districts, are entitled to significant weight. Congress amended Section 2 of the Voting Rights Act in 1982 precisely "to make clear that certain practices and procedures that result in the denial or abridgement of the right to vote are forbidden even though the absence of proof of discriminatory intent protects them from constitutional challenge." Chisom v. Roemer, 111 S.Ct. 2354, 2358 (1991).

Third, Minneapolis has a total minority population of 87,316, or 23.7% of its total population. This population includes 47,948 African-Americans, 15,723 Asian-Americans, 12,335 Native Americans, 7,900 Hispanics, and 3,410 other minorities.[32] The legislative districts established in 1982 created six senate districts and twelve house districts entirely within the City of Minneapolis. See LaComb v. Growe, 541 F.Supp. 160, 162 (D. Minn. 1982). If minorities had proportional representation in the Minneapolis legislative delegation, they would hold four seats in the eighteen Minneapolis legislative districts. Yet, minorities have held only one seat in these eighteen districts in the past decade. Although minorities are not guaranteed proportional representation under Section 2, we may consider the significant proportional underrepresentation of minorities in determining whether a violation of the Act has occurred. See S. Rep. No. 417, supra.

Fourth, the only minority representative from Minneapolis now in the house was elected from a super-majority minority district. This is Representative Richard Jefferson of Minneapolis in House District 57B, which has a total minority concentration of

[32] Pub. L. No. 94-171, 89 Stat.1023 (codified as amended at 13 U.S.C. § 141 (1988)).

60% and an African-American concentration of 43%.[33] The Emison plaintiffs have demonstrated that a senate district in Minneapolis can be drawn with minority populations which closely approximate those proven sufficient to elect minority members to the house of representatives. This proposed senate district would contain a 62.5% total minority concentration and a 44.5% African-American concentration.

Fifth, another factor we may consider under the Senate Report is the extent to which minorities bear the effects of discrimination in education, employment, or health. S. Rep. No. 417 at 29, 1982 U.S.C.C.A.N. at 206. The Minneapolis public school district has been found to have "acted intentionally to maintain or increase racial segregation in the schools." Booker v. Special Sch. Dist. No. 1, Minneapolis, 451 F.Supp. 659, 660 (D. Minn. 1978). The district's policies were found to have been "especially offensive due to defendant's knowledge of the extensive nature of housing segregation within its bounds." Booker v. Special Sch. Dist. No. 1, Minneapolis, 351 F.Supp. 799, 809 (D. Minn. 1972).[34]

Sixth, we may also consider the extent to which the state has used voting practices or procedures that may enhance the opportunity for discrimination against the minority group. S. Rep.

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[33] See Minority Population Report, dated August 20, 1991, provided to the Special Masters at the September 16, 1991, meeting.

[34] The continuing performance gap between minorities and whites in the Minneapolis school district was recently reported in the Minneapolis Star Tribune. See Bob Hotakainen, Benchmark Test Passing Rates Fall, Hitting All-time Low, Minneapolis Star Tribune, Feb. 5, 1992, at 1Bw.

No. 417 at 29, 1982 U.S.C.C.A.N. at 206.[35] We find a strong inference that the Minneapolis legislative districts in Chapter 246 were drawn to protect incumbents in the city's overwhelmingly white legislative delegation. Of the eighteen legislators from the City of Minneapolis, no incumbent senators are paired with other incumbents in the upcoming election, and incumbent house members are paired in only one house district. Some pairing would be literally inevitable in light of the relative population loss in Minneapolis.[36] It appears the avoidance of incumbent pairing took priority over the protection of minority interests in the plan proposed by the defendant intervenor.[37] "Since it is frequently

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[35] The extent of any history of official discrimination in voting is another factor a court may consider under the Senate Report. S. Rep. No. 417 at 28, 1982 U.S.C.C.A.N. at 206. Although we do not rely on it, Minnesota has some history, albeit quite old, of official discrimination against minorities in the voting process. The state constitution, as originally adopted in 1857, restricted the right to vote to "white citizens," "white persons," and only certain Native Americans. The voting restriction to "white" persons was eliminated in 1868, although state constitutional restrictions on the voting rights of Native Americans continued and were enforced until at least 1917. See In re Liquor Election in Beltrami County (Onsahl v. Johnson), 138 Minn. 42, 163 N.W. 988 (1917).

[36] Minneapolis declined in population from 370,951 in 1980 to 368,383 in 1990. The state's population as a whole, however, grew by approximately 7.3% during the same period. Population Notes, Minnesota State Demographer, April 1991. As a result, Minneapolis will lose one house district due to population shifts in the past decade.

[37] Incumbent protection is not state policy in Minnesota. The issue of "incumbency" is a major political issue of the day, with strong advocates on each side. Incumbent protection was not, however, a redistricting standard chosen by the legislature in the concurrent resolutions unanimously adopted by both houses in its failed attempts at redistricting. (See Emison, No. 4-91-202 (D. Minn. Oct. 1, 1991) (Exhibits to the Memorandum of the Minnesota Legislature Regarding

impossible to preserve white incumbencies amid a high black-percentage population without gerrymandering to limit black representation, it seems to follow that many devices employed to preserve incumbencies are necessarily racially discriminatory." Ketchum v. Byrne, 740 F.2d 1398, 1408 (7th Cir. 1984), cert. denied, 471 U.S. 1135 (1985).[38]

Although the record is not clearly developed on all factors, we conclude the evidence is sufficient to establish that minority

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Criteria for Legislative and Congressional Redistricting Plans, filed October 1, 1991)). The concurrent resolutions did, however, provide that districts must not dilute minority voting strength, and that where a concentration of a racial or language minority makes it possible, the districts must increase the probability that minority members will be elected. Thus, the defendant intervenors' attempt to protect incumbents resulted in disregard of the announced state policy of nondilution of minority populations.

[38] We recognize that the disclaimer language in Section 2(b) provides "[t]hat nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population." The legislative history is less than completely enlightening on the significance of this clause.

On the one hand, the Senate Report indicates the purpose of the clause was to "put[] to rest any concerns that have been voiced about racial quotas." S. Rep. No. 417 at p. 31, 1982 U.S.C.C.A.N. at 208. The report elsewhere makes clear "there is no requirement that any particular number of factors be proved, or that a majority of them point one way or the other." S. Rep. No. 417 at 29, 1982 U.S.C.C.A.N. at 207. Similarly, "[t]he failure . . . to establish any particular factor is not rebuttal evidence of non-dilution." Id. at n.118. Finally, the Senate Report notes that "the presence of minority elected officials is a recognized indicator of access to the (electoral) process." S. Rep. No. 417 at 16, 1982 U.S.C.C.A.N. at 193.

On the other hand, the Senate Report also states that, "[t]he disclaimer thus guarantees that the question of whether minority candidates have been successful at the polls will not be dispositive in determining whether a violation has occurred." So Rep. No. 417 at 68, 1982 U.S.C.C.A.N. at 247. The report also indicates that a mere history of minority underrepresentation, plus the addition of one other "factor" would not be sufficient to prove a violation. S. Rep. No. 417 at 34, 1982 U.S.C.C.A.N. at 212.

voting interests have been diluted in the City of Minneapolis in violation of Section 2. This finding is consistent with the Supreme Court's admonition that the Act is to be interpreted in "the broadest possible scope," and that courts may not resort to "judicially created limitation(s) on the coverage of the broadly worded statute." Chisom, 111 S.Ct. at 2368. The all-white senate delegation from Minneapolis, the significant proportional underrepresentation of minorities from the overall legislative delegation from Minneapolis, the apparent attempt to protect incumbencies at the expense of minority concentrations, the fragmentation of a geographically cohesive minority population into different senate districts, the educational disadvantage of Minneapolis minorities, the segregation in the Minneapolis school districts, and the judicial experience showing the need for supermajority minority districts, when considered all together, are sufficient to create a prima facie case in the totality of the circumstances which exists here.[39]

The plan submitted by the defendant intervenors which is essentially Senate File 1596, as vetoed by the Governor, fails to create any majority minority senate districts, but it does propose one near majority minority district. This district contains 49% total minorities, with African-Americans comprising only 29% of the district's population. The defendant intervenors' plan also creates a Minneapolis senate district with a total minority concentration of

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[39] Although we do not find that a Voting Rights Act violation has been established in the area of the Red Lake and White Earth reservations, we note that Minnesota has some history of official discrimination in the voting process in the Red Lake reservation area. See In re Liquor Election in Beltrami County (Opsahl v. Johnson), 138 Minn. 42, 163 N.W. 988 (1917). We have been advised that State Senator Harold "Skip" Finn is a Native American. The state senate redistricting plan we adopt today contains a higher Native American concentration in that area than the plans proposed by the defendant intervenors or the plaintiffs.

40% and an African-American concentration of 28%.[40] Defendant intervenors' proposal as to these districts is also included in the plan adopted by the State district court in its December 9, 1991, order. See n.23, supra. We find that the defendant intervenors' proposal, as adopted by the state court, fails to provide the equitable relief necessary to cure the violation of the Voting Rights Act.

To be sure, arguments can be made that creation of two strong minority-influenced senate districts in Minneapolis, one nearly a majority minority district, adequately protects minority voting interests. However, we cannot ignore the fact, which history has shown, that the all-white senate delegations from Minneapolis are the result of minority concentrations at the levels proposed by the defendant intervenors. And, where the defendant intervenors have not made a record to support its theory, we turn to judicial experience to find a reliable guide to action. See Smith v. Clinton, 687 F.Supp. 1361, 1363 (E.D. Ark.), aff'd, 488 U.S. 988 (1988). Judicial experience, as well as the results of past elections, suggests that the creation of a super-majority minority senate district in Minneapolis is necessary if we are to find that a districting scheme complies with the Voting Rights Act.

"[H]istorically disadvantaged minorities require more than a simple majority in a voting district in order to have . . . a

[40] The alternative approaches of the parties raise the sort of difficult questions Justice Marshall foresaw in Beers v. United States, 425 U.S. 130, 153-54 n.12 (1976) (Marshall, J., dissenting). Here an increase in minority concentration to super-majority levels in one district results in a decline in minority voting strength in another district. For example, in the plans submitted by the parties, the second largest minority population senate districts in Minneapolis have a 19% minority variance, with the defendant intervenors creating a 40% minority district, and the Emison plaintiffs creating only a 21% minority senate district.

practical opportunity to elect candidates of their choice." Whitfield v. Democratic Party, 890 F.2d 1423, 1428 (8th Cir. 1989) aff'd en banc, 902 F.2d 15 (8th Cir. 1990), cert. denied, 111 S.Ct. 1089 (1991) (quoting Smith v. Clinton, 687 F.Supp. 1361, 1362 (E.D. Ark.), aff'd, 488 U.S. 988 (1988)). The three-judge panel in Smith, noted that in fashioning a remedy for Voting Rights Act violations, a guideline of 65% of the total population is frequently used because, "[i]t is widely understood that 'minorities must have something more than a mere majority even of voting age population in order to have a reasonable opportunity to elect a representative of their choice.'" Smith, 687 F.Supp. at 1362-63 (quoting Ketchum v. Byrne, 740 F.2d at 1413).

Decisions from the most recent round of redistricting cases also suggest that "super-majority minority" districts are necessary to adequately protect minority voting interests. Super-majority concentrations of "approximate[ly] 65% minority populations are generally regarded as necessary to ensure minorities a reasonable opportunity to control a district." Hastert v. State Bd. of Elections, 777 F. Supp. 634 (N.D. Ill. 1991). As the three-judge panel in Hastert explained:

> Minority concentrations of 65% total population and 60% voting age population within a single district are regarded as necessary to provide a minority population with a reasonable opportunity to "exercise political control over that district." United Jewish Organizations, Inc. v. Carey, 430 U.S. 144 (1977). These "super-majority districts" compensate for the higher nonvoting age population percentages, lower voter registration and lower turnout found in minority communities. See Ketchum v. Byrne, 740 F.2d 1398, 1413-15 (7th Cir. 1984), cert. denied, 471 U.S.

1135 (1985); In re Congressional Districts [Reapportionment] Cases, No. 81 [sic] 81 C 3915, slip op. at 14 (N.D. Ill. Nov. 23, 1981).

Id. at 647 n.20. We are also mindful of the admonition that "when reliable, determinative statistics are not available, in scrutinizing a redistricting plan for fairness to minority groups, the district court should give careful consideration to the 65% figure or some variation of it." Ketchum v. Byrne, 740 F.2d at 1416.

The plan we adopt today, attached as Section II.B., contains a super-majority minority senate district in Minneapolis Senate District 59, with a total minority concentration of 60% and an African-American concentration of 43%. This is the same minority concentration which has proven adequate to elect minority members to the house from Minneapolis. Although we do not achieve precisely the 65% guideline suggested by case law,[41] we use "some variation of it," Ketchum, 740 F.2d at 1416, to come as close as possible while respecting other announced criteria.[42]

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[41] We chose not to use the super-majority minority senate district proposed by the Emison plaintiffs, even though its minority concentration is slightly higher than the super-majority minority district created by the court. The Emison plaintiffs' district achieved a slightly higher minority concentration only by using boundary lines that were significantly jagged. The juts and teeth in that district are, in our view, excessive and not necessary to achieve an acceptable district.

[42] Even if this court were to find the evidence insufficient to establish a voting rights violation, the affirmative relief we grant in the present case is no greater than that we would otherwise provide under the standards we imposed on any of the court plans to be submitted under paragraph 5 of this court's October 21, 1991, criteria order, which provides: "The districts shall preserve the voting strength of minority populations and will, wherever possible, increase the probability of such minority representation from areas of sizable concentrations of minority populations." Emison, No. 4-91-202 (D. Minn. Oct. 21, 1991) (Order at 3).

Federal Court Plan for Redistricting the State Legislature

In view of our finding that the Voting Rights Act has been violated and plaintiffs are entitled to equitable relief, we turn to the overall question of legislative redistricting. The remedial plan we adopt today provides the relief necessary under the Voting Rights Act and the Constitution. In granting this equitable relief, we necessarily review the adjoining districts, and contemporaneously review and adopt a legislative redistricting plan to obviate the existing constitutional infirmities. Maps of the court legislative plan are attached in Section IV.A. The controlling descriptions for the House and Senate plans are attached in Sections II.A.3. and B.3. If there are any variances in other attachments, these census tract descriptions control. Also included in Sections II.A. and II.B. are computer generated data reflecting district populations, subdivision splits, minority populations, and incumbents. The results of a deviation analysis, a visual compactness analysis, and a computerized compactness analysis executed with the assistance of the system administrator of the Legislative Redistricting Committee are also attached as Section III.

The constitutional requirements of redistricting plans are well established. In considering whether a plan of legislative redistricting is constitutional, a court must strive to achieve the lowest population deviations while also following expressions of state policy on compactness and contiguity. Of course, a court plan must be nonpartisan in achieving these standards.

The defendant intervenors urge that we adopt Chapter 246 as the basic configuration of any plan of redistricting. They argue that the Supreme Court's decision in White v. Weiser, 412 U.S. 783 (1972), and Upham v. Seamon, 456 U.S. 37 (1982), require

that we defer to Chapter 246 as expressing the "state policy." We cannot agree.[43]

Chapter 246 contained numerous infirmities, including excessive population disparities and noncontiguous districts. The parties concede Chapter 246 was a hastily drafted bill containing numerous errors. These constitutional defects were acknowledged by all of the parties. We agree that Chapter 246 is unconstitutional.

The defendant intervenors urge that we adopt the provisions of a bill, Senate File 1596, which allegedly contains the curative amendments to Chapter 246. This bill contains 160 changes to Chapter 246 spread over sixty-three pages of text. However, Senate File 1596 was vetoed by the governor in January, 1992. Thus, the attempted correction of Chapter 246 has been rejected as state policy by the governor's veto. See Duxbury v. Donovan, 272 Minn. 424, 128 N.W.2d 692 (1965); see also Smiley v. Holm, 285 U.S. 355 (1932); cf. Wise v. Linscomb, 437 U.S. 535, 539-40 (1978). The executive has a constitutionally recognized role in redistricting in Minnesota. To urge that Chapter 246 as amended by Senate File 1596 reflects state policy ignores the veto of the highest executive officer of the state.

Further, Chapter 246, as well as the modifications proposed in Senate File 1596, do not provide a remedy for the diminution of minority voting rights we have addressed. Our discretion in fashioning relief is not limited to Chapter 246.

In preparing the court plan, we have considered state policy as expressed in various sources, including the state constitution and

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[43] The ease in which the court was able to correct the legislative plans in Weiser and Upham does not exist in the present case. See n.50, infra. Among other things, no map of Chapter 246, as written, was provided to the court.

a bipartisan concurrent resolution unanimously adopted by both houses of the legislature.[44] The concurrent resolution reflects state policy on redistricting, and is substantially similar to the criteria this court previously adopted. This concurrent resolution provides, in relevant part:

> (1) The Senate must be composed of 67 members. The House of Representatives must be composed of 134 members.
>
> (2) Each district is entitled to elect a single member.
>
> (3) A representative district may not be divided in the formation of a senate district.
>
> (4) The districts must be substantially equal in population. The population of a district must not deviate from the ideal by more than two percent, plus or minus.
>
> (5) The districts must be composed of convenient contiguous territory. To the extent consistent with the other standards in this resolution, districts should be compact. Contiguity by water is sufficient if the water is not a serious obstacle to travel within the district.
>
> (6) The districts must be numbered in a regular series, beginning with House district 1A in the northwest corner of the state and proceeding across the state from west to east, north to south, but bypassing the seven-county metropolitan area until the southeast corner has been reached; then to the seven-county metropolitan area outside the cities of Minne-

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[44] Defendant intervenors have acknowledged in briefs to this court that the concurrent resolutions of the legislature on redistricting are an expression of state policy. Emison, No. 4-91-202 (D. Minn. Nov. 12, 1991) (Memorandum of the Minnesota Legislature in Response to the Emison Plaintiffs' Proposed Legislative and Congressional Redistricting Plans). The concurrent resolution was submitted to the Court on October 1, 1991, as an exhibit to defendant intervenors' brief on the criteria for legislative and congressional redistricting plans.

apolis and St. Paul; then in Minneapolis and St. Paul.

(7) The districts must not dilute the voting strength of racial or language minority populations. Where a concentration of a racial or language minority makes it possible, the districts must increase the probability that members of the minority will be elected.

(8) A county, city, or town should not be divided into more than one district except as necessary to meet equal-population requirements or to form districts that are composed of convenient contiguous territory.

(9) The districts should attempt to preserve communities of interest where that can be done in compliance with the preceding standards.

H.R. Con. Res. No. 2, 77th Leg., Reg. Sess. (1991).

A) Population Disparities

Equality of population in state legislative redistricting is a criteria which has thus far escaped the standards of exactness required in congressional redistricting at least where an otherwise lawful plan is validly enacted by the state legislature. See, e.g., Connor v. Finch, 431 U.S. 407, 418 (1977); Mahan v. Howell, 410 U.S. 315 (1973).

Equality in population was recognized by the Minnesota legislature in its May, 1991, concurrent resolutions, which set a maximum permissible deviation of plus or minus 2%. This court's October 21, 1991, criteria order also set an outside deviation limit of plus or minus 2% in plans that would be considered by the court. Although the outer limit of plus or minus 2% deviation may be permitted by the federal constitution, this does not mean that where the legislature has failed to enact a valid plan, courts should not strive to implement, along with other constitutional concerns, a plan of redistricting which provides the greatest numerical

equality possible.[45] The plan this court now adopts has significantly lower population deviations from the ideal than the plans proposed by the defendant intervenors or the plaintiffs. In 1965, the Minnesota Supreme Court recognized that "[t]he whole object of (redistricting) . . . 'is to vest in the people rights that inherently belong to them, namely, participation upon an equal footing in the affairs of the state.'" Duxbury v. Donovan, 272 Minn. 424, 434, 138 N.W.2d 692, 698-99 (1965) (quoting State ex rel. Meighen v. Weatherill, 125 Minn. 336, 341, 147 N.W. 105, 107 (1914)). The state constitution also provides that "[t]he representation in both houses shall be apportioned equally throughout the different sections of the state in proportion to the population thereof." Minn. Const. art. IV, § 2.

The Supreme Court has observed that any court-ordered reapportionment plan will be held to stricter standards and must strive to achieve "the goal of population equality with little more than de minimis variation." Chapman v. Meier, 420 U.S. 1, 27 (1975). As the Court in Chapman stated, "[a] court-ordered plan, however, must be held to higher standards than a State's own plan. With a court plan, any deviation from approximate population equality must be supported by enunciation of historically significant state policy or unique features." Id. at 26.

The defendant intervenors' proposed house districts range from a negative deviation of -1.96% (640 persons) to a positive deviation of 1.97% (643 persons), a range of 1243 persons or 3.93%. On average, i.e. the statistical mean deviation, these house districts deviate from the ideal population by .92% (302 persons).

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[45] Court-made plans must be viewed with greater scrutiny than legislative plans. See Wise v. Linscomb, 437 U.S. 535, 540 (1978); Connor v. Finch, 431 U.S. 407 (1977).

None of the house districts are at the ideal population level.

Plaintiffs' house districts range from a negative deviation of -.95% (309 persons) to a positive deviation of .96% (314 persons), a range of 623 persons or 1.91%. On average, plaintiffs' house districts deviate from the ideal population by .32% (106 persons). One of the plaintiffs' house districts is at the ideal population level.

The house districts created by this court's plan range from a negative deviation of -.74% (243 persons) to a positive deviation of .66% (214 persons), a range of 457 persons or 1.40%. On average, the house districts deviate from the ideal population by .19% (62 persons). Six of the house districts in the plan adopted today are at the ideal population level.

The defendant intervenors' proposed senate districts range from a negative deviation of -1.83% (1197 persons) to a positive deviation of 1.59% (1036 persons), a range of 2233 persons or 3.42%. On average, the senate districts deviate from the ideal population by .66% (430 persons). None of the senate districts are at the ideal population level.

Plaintiffs did not submit statistical data for their senate districts. One can be deduced, however, from the house district data supplied by the plaintiffs. Plaintiffs' senate districts range from a negative deviation of -.80% (508 persons) to a positive deviation of .80% (1.60 persons), a range of 1016 persons or 1.60%. On average, the senate districts deviate from the ideal population by .24% (152 persons). One of the senate districts is at the ideal population level.

The senate districts created by this court's plan have population deviations ranging from a negative .74% (401 persons) to a positive deviation of .58% (368 persons), a range of 769 persons or 1.20%. On average, the senate districts deviate from the ideal population by .15% (95 persons). Two of the senate

districts are at the ideal population level.

The defendant intervenors' plan fails to give each citizen of Minnesota an equally effective voice in the election of members to the legislature. For example, in one district 32,011 people have one representative under defendant intervenors' plan. In another district, 33,293 people are also entitled to one representative. Under the court's plan, 67% of the house district populations are within .25% of ideal. The defendant intervenors' plan only has 15% of the districts within .25%. We do not perceive any justification for the population disparities in their plan. The court's plan is more compact, splits fewer cities and townships, better protects minority voting rights, and still contains substantially lower population deviations.

B) Municipal Boundaries

This court's plan of legislative redistricting better meets the state policy of respecting municipal boundaries wherever possible. This element of state policy seeks to ensure that the equality of representation is also effective representation by attempting to follow and respect the communities of interest created by cities and other minor civil divisions. There are fewer city and township splits in our plan than in the plans proposed by the defendant intervenors or the plaintiffs. This court's senate plan splits only 36 cities and townships, while the defendant intervenors' plan splits 44 cities and townships. This court's house plan splits only 58 cities and townships. The house plan proposed by the defendant intervenors splits 61 cities and townships, while the plaintiffs' plan splits 92 cities and townships.[46]

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[46] The Emison plaintiffs did not provide subdivision split data for their senate districts.

C) Compactness

The court's plan is also more compact than either of the two plans submitted to the court. In evaluating the compactness of plans, we have used the methodology suggested in Polsby and Popper, The Third Criterion: Compactness as a Procedural Safeguard Against Gerrymandering, 9 Yale Law & Policy Review 301 (1991). The analysis was performed using the computer supplied by the parties and a computer program developed by the Redistricting System Administrator for the Legislative Subcommittee on Redistricting.

At the house district level, the court's redistricting plan is 7% more compact than that proposed by defendant intervenors and 6% more compact than plaintiffs' proposal. At the senate district level, the court's plan is 10% more compact than the plaintiffs' plan, and is as compact as the defendant intervenors' plan.[47] Overall, the court plan is more compact than either of the plans submitted.

D) Partisan Fairness

The interests of both major political parties in Minnesota are represented in this case. Both have argued that the plans of redistricting submitted by the other are politically motivated and unfair.

In Davis v. Bandemer, 478 U.S. 109 (1986), the Supreme Court ruled that partisan gerrymandering was a justiciable issue.

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[47] A summary of the statistical compactness analysis is attached as Section III.3. Prior to the availability of the computer generated compactness analysis, the Special Masters utilized the alternative methodological technique of visually comparing the area of a district as a percentage of the area of a circumscribed circle around the district. The results of that analysis, although admittedly less precise than a computerized analysis, confirm the overall superior compactness of the court plan. A summary of that analysis is contained in Section III.2.

The much divided Bandemer Court established the following elements of this justiciable claim: "[I]n order to succeed . . . plaintiffs were required to prove both intentional discrimination against an identifiable political group and an actual discriminatory effect on that group." Id. at 127. Further, the plurality disagreed with the position that "disproportionate election results alone are sufficient effect to support a finding of a constitutional violation." Id. at 142. Rather, the plurality found that it was "appropriate to require allegations and proof that the challenged legislative plan has had or will have effects that are sufficiently serious to require intervention by the federal courts in state reapportionment decisions." Id. at 134. Specifically, "[u]nconstitutional discrimination occurs only when the electoral system is arranged in a manner that will consistently degrade a voter's or a group of voters' influence on the political process as a whole." Id. at 132.

Other than our concern expressed above relating to the dilution of minority voting interests, there has been no showing by any of the parties that either of the legislative redistricting plans submitted to this court for review are unconstitutionally gerrymandered under this test.[48]

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[48] It should be noted that one of the principal architects of Chapter 246 has stated:

> You can gerrymander!
>
> Modern technology, while making it practicable to draw districts that are mathematically equal, has also allowed the majority to draw districts that pack and fracture the minority in a way as to minimize a possibility of there ever becoming a majority.
>
> The Courts are now faced with the need to develop new criteria for judging the 'fairness' of redistricting plans, but so far they have not succeeded.

In testing the political fairness of plans of redistricting, the parties urge that one indicia of unfairness is the extent to which the incumbents of one party or the other have been matched or paired with other incumbents in the new districts. Here, both °parties urge that plans submitted to this court show clear indications of partisanship. These arguments must be evaluated with the Supreme Court's observation that minimizing the "number of contests between present incumbents does not in itself establish invidiousness." White v. Weiser, 412 U.S. 783, 797 (1973) (quoting Burns v. Richardson, 384 U.S. 73, 89 n.16 (1966)).

The plan developed by the court was developed without regard to the residence of incumbents.[49] Adherence to principles of compactness and population equality, and respect for governmental boundaries insures that partisan gerrymandering is reduced or eliminated. See, Polsby & Popper, The Third Criterion: Compactness as a Procedural Safeguard Against Partisan Gerrymandering, 9 Yale L. & Pol'y Rev. 301 (1991); Backstrom, Robins & Miller, Partisan Gerrymandering in the Post-Bandemer Era, 4 Constitutional Commentary 285 (1987); Schwartzberg, Reapportionment, Gerrymanders and the Notion of Compactness, 50 Minn. L. Rev. 443 (1966).

Peter S. Wattson, Senate Counsel for the State of Minnesota, How to Draw Redistricting Plans That Will Stand Up in Court (August 1, 1989) (emphasis added).

Given the adoption of the court's own plan, we need not today address how to develop such new criteria for judging constitutional fairness, but we do believe that such new criteria are needed.

[49] After it was completed, however, two boundaries were moved very slightly in an effort to strengthen minority representation. We took similar care to avoid pairing minority incumbents in drafting the 1982 legislative districts. See LaComb v. Growe, 541 F.Supp. 160, 164, 165 n.14 (D. Minn. 1982).

The court's plan of redistricting was developed without regard to partisanship. Adoption of the court's plan insures that partisan motivation, if in fact it existed in the plans presented to us, is not perpetuated.

Finally, we consider Weiser and Upham. In those cases, congressional redistricting plans were the only evidence of state policy and the district courts did not rely on other state policies.[50] State policy in the present case is reflected in the bipartisan resolutions of the legislature. We also have followed state policy as reflected in the state constitution's requirement that population be apportioned equally. See Minn. Const. art. IV, § 2. We have also explained why we believe the plan complies with federal law,

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[50] Weiser did not involve a Voting Right Act issue. In Emison, two parties have come forward claiming that their rights have been violated under this act. The issues in both Weiser and Upham involved relatively minor deviations from the optimal reapportionment plan which could be easily remedied without affecting other district lines. Such is not the case with Emison.

The average population deviations contested in Weiser were well under 2%. In Emison, this court is facing population deviations in Chapter 246 as great as 43.45% above the ideal and 45.10% below the ideal, with the total range of these deviations resting at 88.55% -- this is 22.11 times the overall range which the Minnesota Legislature has imposed upon itself.

The holding in Upham addresses a court-ordered reapportionment plan for only one county. In Emison, this court is being asked to adopt approximately 160 corrections to Chapter 246 which allegedly affect over thirty state senate and house districts in approximately one third of the state's eighty-seven counties.

As the Court stated in Weiser, district courts "should defer to state policy in fashioning relief only where that policy is consistent with constitutional norms and not in itself vulnerable to legal challenge. The District Court should not, in the°name of state policy, refrain from providing remedies fully adequate to redress constitutional violations which have been adjudicated and must be rectified." Weiser, 412 U.S. at 797.

as well as the existing policy of the state.[51] In drafting a constitutional plan, Weiser and Upham do not limit our discretion by requiring adherence to an unconstitutional redistricting statute where the only proposed curative amendments have been rejected by the executive branch.

We are convinced that the court's plan constitutionally protects minority voting rights and best serves the interests of the citizens of the State of Minnesota by respecting city and township lines while creating more compact and more equally populated legislative districts.

D. Congressional Plan

The Minnesota legislature passed a congressional redistricting plan, Senate File 1597, on January 9, 1992, which was vetoed by the Governor that same day. As this attempt at redistricting failed to survive the legislative process, the proposed plan does not represent state policy. See Duxbury v. Donovan, 272 Minn. 424, 432-33, 138 N.W.2d 692, 698 (1965). In the meantime, the congressional districts now in place remain seriously malapportioned. The existing districts deviate from the ideal as follows:[52]

District	Total Pop.	Abs Dev.	% Dev.
01	527,423	-19,464	- 3.56
02	480,079	-66,808	-12.22
03	668,263	121,376	22.19
04	539,004	- 7,883	- 1.44
05	498,387	-48,500	- 8.87
06	652,982	106,095	19.40
07	518,213	-28,674	- 5.24
08	490,748	-56,139	-10.27

Plan Total 4,375,099

Largest Positive Deviation is:	121,376	22.19 Percent
Largest Negative Deviation is:	-66,808	-12.22 Percent
Overall Range:	188,184	34.41 Percent

The "equal representation" standard of Article 1, § 2 of the Constitution requires that congressional districts "be apportioned to achieve population equality 'as nearly as is practicable.'" Karcher v. Daggett, 462 U.S. 725, 730 (1983) (quoting Wesberry v. Sanders, 376 U.S. 1, 7-8 (1964). Karcher goes on to state:

> Adopting any standard other than population equality, using the best census data available would subtly erode the Constitution's ideal of equal representation. If state legislators knew that a certain de minimis level of population differences was acceptable, they would doubtless strive to achieve that level rather

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[51] As stated by Justice Stevens in Karcher v. Daggett, 466 U.S. 910, 911 (1984) (Stevens, J., concurring):

> Once a Constitutional violation has been found, a District Court has broad discretion to fashion an appropriate remedy . . . Because the Forsythe Plan contained lower population variances, it more completely redressed the Constitutional violation. Nor was it an abuse of discretion to consider the fact that the Forsythe Plan created more compact districts; our previous opinion acknowledged that this was a legitimate consideration in reapportionment . . . ; here the District Court found that the plan advocated by appellants constituted 'an intentional gerrymander in favor of certain democratic representatives'.

[52] These congressional district population figures originate from the 1990 Census of Population and Housing data prepared by the United States Bureau of the Census. See n.4, supra.

> than equality. Furthermore, choosing a different standard would import a high degree of arbitrariness into the process of reviewing apportionment plans.

Karcher, 462 U.S. at 731-732 (citing Kirkpatrick v. Preisler, 394 U.S. 526, 531-32 (1969) (footnote omitted); see also White v. Weiser, 412 U.S. 783, 790 at n.8 (1973); Reynolds v. Sims, 377 U.S. 533, 577 (1964).

We now adopt the congressional redistricting plan prepared by the Special Masters at the request of this court, which contains the smallest population deviations achievable. Five of the eight congressional districts are at the absolute ideal size for congressional districts in Minnesota, 546,887 people, and three of the districts deviate from the ideal by only one person. The plan preserves the basic "four-four" structure, adopted in 1982 in LaComb v. Growe, 541 F. Supp. 145 (1982), by creating four entirely metropolitan districts and four districts predominantly located in greater Minnesota. It was not possible to honor the seven-county metropolitan area boundary lines completely because the state's population, while approximately half metropolitan and half outstate, is not exactly so divided.

Our congressional plan also respects county lines in greater Minnesota, where the county typically serves as an important unit of local government. Again, however, to achieve the ideal population equality agreed to by all parties, some county splits were unavoidable. In the metropolitan area, where municipalities are generally the more important units of government, some splits were unavoidable if population equality was to be achieved.

The congressional redistricting plan we adopt today is faithful to the principle of affording equal representation to all regions of the state, it minimizes population deviations from equality, and it is compact. Maps of the court's congressional plan

are attached in Section IV.B. The controlling descriptions are attached in Section II.C.1.. If there are any variances in other attachments, these census tract descriptions control. Also included in Section II.C. are computer generated data reflecting district populations, subdivision splits, and minority populations.

This court considered the three alternate plans submitted by the Emison plaintiffs, the Benson plaintiffs, and the defendant intervenors. After carefully weighing the many arguments advanced and alternatives proposed by all parties, however, we conclude that the plan we adopt today better meets state policy and our previously announced criteria.

CONCLUSION

We find that the redistricting plan as submitted by the defendant intervenors and as adopted by the state district court, which fragments minority voting interests, fails to provide the affirmative relief necessary to adequately protect minority voting rights under Section 2 of the federal Voting Rights Act. 42 U.S.C. § 1973 (1988). The plan we adopt today contains a super-majority minority senate district in the City of Minneapolis with a total minority concentration of 60% and an African American concentration of 43%. In addition, the court finds that the plans submitted by the parties do not contain de minimis population deviations nor do they present compact or contiguous configurations. The court's plan of legislative redistricting better meets the state policy respecting municipal boundaries wherever possible. The court further rejects the proposed congressional redistricting plans of the parties and adopts a plan which contains the minimal population deviations achievable and respects county lines in Greater Minnesota where the county typically serves as an important unit of government.

The foregoing opinion is hereby adopted as our findings of fact and conclusions of law.

This court was properly convened pursuant to 28 U.C.S. § 2284(a) and 28 U.S.C. §§ 1343(a)(3), (4). We acknowledge the stipulation by the parties as to the unconstitutional status of the 1982 congressional district plan and the 1983 state legislative district statutes. In the absence of timely remedial action by the state agencies, and in view of the proven need to prevent continuing dilution of minority voting rights, we conclude that it is our duty to effect a redistricting plan to replace what has been found to be invalid. Once adopted, such plans must govern the nomination and election of all state legislators for Minnesota and all United States Representatives from Minnesota beginning with the 1992 primary and general elections, continuing thereafter until the Minnesota state legislative process timely adopts its own constitutional redistricting plans. We further conclude that irreparable injury would occur in Minnesota to the people, electorate, candidates and their supporters if we did not permanently enjoin the subject of this order and insure that it is properly carried out.

We express our appreciation and gratitude to the parties and intervenors, to the office of the Attorney General of the State of Minnesota, to Special Masters John S. Hoyt, Jr., Joseph T. Dixon, and Gregory L. Wilmes, and to law clerks Elliott G. Smith and Susan J. Nolting, who have all cooperated in working diligently in reviewing the legislative and congressional redistricting plans.

IT IS THEREFORE ORDERED:

That defendant Joan Growe, the duly elected and qualified Secretary of State of the State of Minnesota, in her official capacity, pursuant to Minnesota Statutes, Chapters 200-2110 (Supp. 1991), as the chief election officer of the State of Minnesota, and

all those acting by and under her authority, accept filings and conduct elections only in accordance with the provisions of this order, and in conformity with the election statutes of the State of Minnesota which are not inconsistent therewith. Defendant Growe and those acting by and under her authority are enjoined from accepting filings otherwise than in conformity with this order, or from declaring the results of any such election held otherwise than in conformity with the order of this court, except as may be provided by law for the appeal of this order to the Supreme Court of the United States.

Jurisdiction is retained for the purpose of making any further orders deemed necessary to insure the effectuation of our order adopting a state legislative redistricting plan and a congressional redistricting plan for the State of Minnesota, and this order permanently enjoining interference with said redistricting plans.

Appropriate orders taxing costs against Joan Growe, Secretary of State of the State of Minnesota, will be entered for Masters' fees and expenses, assistants' fees and expenses, printing expenses, computer expenses, and miscellaneous supplies and equipment.

LET JUDGMENT BE ENTERED ACCORDINGLY.

DATED: February 19, 1992.

/s/
Donald P. Lay, United States States Circuit Judge

/s/
Paul A. Magnuson, United District Court Judge

MacLaughlin, J., concurring as to those parts of this decision relating to congressional reapportionment, and dissenting as to the parts of this decision relating to legislative reapportionment.

Since I believe neither the law nor the facts justify the majority opinion regarding legislative reapportionment, I dissent. On December 5, 1991, a majority of this Court enjoined the Minnesota state district court from any further proceedings in Cotlow v. Growe, No. C8-91-985 (Minn. Sp. Redistricting Panel), a case pending before the state court on the issue of legislative and congressional redistricting. That injunction was summarily and unanimously vacated by the Supreme Court of the United States on January 10, 1992. I dissented from the issuance of the injunction and stated, in part, as follows:

> I do not agree that the state court should be enjoined from proceeding with its plan of reapportionment. I see no reason why that court is not fully able to consider and decide the reapportionment issues presented to it.
>
> In addition, [the order of the state court] seems completely appropriate both as to the law and as to the reapportionment plan it proposes. Clearly Chapter 246 represents state policy which, in my judgment, must be the cornerstone of any new reapportionment plan. The amendments made to Chapter 246 by the state court . . . are an attempt by the state court to follow the state policy provided in Chapter 246.

(Footnotes omitted.)

The majority now makes a last-minute attempt to thwart legitimate state policy and to prevent the state court plan from

being implemented. I continue to strongly believe that the unvetoed law enacted by the Minnesota Legislature, that is, Chapter 246, must be the starting point for any reapportionment plan, and that the majority opinion clearly ignores the law in its failure to recognize that state policy.

The role of courts in reapportionment cases is narrowly circumscribed. The United States Supreme Court has made clear that reapportionment is primarily an issue for the political branches, and that "(i)n fashioning a reapportionment plan or in choosing among plans, a district court should not pre-empt the legislative task nor 'intrude upon state policy any more than necessary. Upham v. Seamon, 456 U.S. 37, 41-42 (1983) (citing White v. Weiser, 412 U.S. 783, 794-95 (1973)). A court-ordered reapportionment plan must reconcile the requirements of the federal constitution with the goals of state policy; "[a]n appropriate reconciliation can only be reached if the district court's modifications of a state plan are limited to those necessary to cure any constitutional or statutory defect." Id. at 43. The Supreme Court has therefore held that a district court impermissibly intrudes on state policy when, in choosing between two possible court-ordered redistricting plans, it fails to choose the plan that most closely approximates the state-proposed plan. Id. at 42 (citing Weiser, supra).

In the instant case, this Court has before it a lawfully enacted reapportionment plan, a plan that embodies the state policy of Minnesota regarding the apportionment of Minnesota's own legislative districts. Faced with choosing between a plan based on Minnesota's reapportionment legislation and plans unrelated to that legislation, this Court's obligation is clear: it errs if it does not choose the plan that is modeled on, and most closely approximates, the state policy as evidenced by the legislation. See Id. The plan

of the Minnesota state district court is based upon Chapter 246.[1] Chapter 246 is not perfect, but neither is it fatally flawed. Indeed, the Minnesota court properly found that constitutional defects in Chapter 246 could be cured and, in accordance with the mandate of the United States Supreme Court, made the adjustments necessary to render the plan constitutionally sound.[2] Cotlow v. Growe, No. C8-91-985 (Minn. Sp. Redistricting Panel, Dec. 9, 1991). Under these circumstances, in my opinion, the proper role of this Court is to either stay its hand and allow the state court plan to proceed or to defer to Minnesota's legislative reapportionment policy by adopting the state court plan as our own.

I. The Alleged Voting Rights Violation

The majority, in an extraordinary act of reaching out, concludes that voting rights violations exist and that it is therefore justified in brushing aside state policy in favor of its own reapportionment preferences.[3] This Court is of course obligated to ensure that any plan it adopts safeguards voting rights; as the United States Supreme Court has noted, the sole limitations on judicial deference to state apportionment policy are the substantive constitutional and statutory standards to which reapportionment plans are subject. Upham, 456 U.S. at 42. For several reasons, however, I cannot agree that voting rights violations have been proven in this case.

First and foremost, as far as voting rights are concerned,[4] the plaintiffs' allegation is that because of population shifts, the apportionment plan established by court order in 1982 now dilutes minority voting rights in violation of section 2 of the Voting Rights Act, 42 U.S.C. § 1973. The 1982 court-ordered apportion-

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[1] The majority asserts that in devising its plan, the state court simply adopted the curative amendments passed by the legislature, but vetoed by the governor. However, in its order adopting its legislative redistricting plan, the state court specifically stated that because the curative amendments had not been adopted into law, they were not entitled to the deference to which Chapter 246 was entitled. Cotlow v. Growe, No. C8-91-985 at 11 (Minn. 5p. Redistricting Panel, Dec. 9, 1991).

[2] In taking as its starting point the legislature's plan and making only those changes necessary to correct its defects, the state court followed the path of numerous federal courts that have deferred to state reapportionment policy by making only those changes that are statutorily or constitutionally required. See, e.g., Cook v. Luckett, 735 F.2d 912, 918 (5th Cir. 1984); Buskey v. Oliver, 574 F.Supp. 41, 43 (M.D.Ala. 1983); Farnum v. Burns, 561 F.Supp. 83, 92 (D.R.I. 1983); Rybicki v. State Bd. of Elections, 574 F.Supp. 1082, 1125 n.108 (N.D.Ill. 1982); Terrazas v. Clements, 537 F.Supp. 514, 528 (N.D.Tex. 1982).

[3] I find it disturbing that the majority reaches its conclusions on voting rights issues without having had the benefit of briefs or oral arguments on the voting rights violations that it purports to find.

[4] Plaintiffs have raised challenges based on the United States and Minnesota constitutions, as well as challenges based on the Voting Rights Act. In their papers and arguments, plaintiffs did not emphasize their voting rights claims; instead, they focused almost exclusively on their other claims.

Moreover, the majority's assertion that the Emison plaintiffs urged the creation of a super-majority minority senate district in Minneapolis is not strictly accurate. The Emison plaintiffs argued instead that it was "possible" to create a senate district in Minneapolis with a higher concentration of African-Americans than that present in the legislative plan. Thus, they proposed the creation of a senate district with an African-American population of 44.5%; that is, they requested a senate district in which African-Americans constituted a plurality. Nowhere did they urge this Court to adopt a theory that super-majority minority senate districts were necessary in order for a redistricting plan to comply with the strictures of the Voting Rights Act. Pl.'s Hem. Regarding the Unfairness of the Legislature's Redistricting Plan at 13-14.

ment, however, was superseded when the legislature passed Chapter 246 and the state court declared Chapter 246 to be validly enacted law. When Chapter 246 became law, plaintiffs' allegations of voting rights violations in the 1982 apportionment were rendered irrelevant. Significantly, no party to this suit has alleged, much less proved, that Chapter 246 violates section 2 of the Voting Rights Act; rather, plaintiffs have asserted only that their proposed plan "better" preserves the political power of minorities. There is no requirement, however, that a lawfully enacted reapportionment plan that complies with the Voting Rights Act be set aside in favor of an allegedly "better" plan.[5]

Secondly, there is in my opinion simply no evidence in the record to support the majority's determination that an unlawful dilution of minority voting rights has been proven. As an initial matter, I am not persuaded by the majority's conclusion that this court is not bound to follow the three-part Gingles test in determining whether dilution has occurred. Reasoning that there are no salient differences between challenges to multi-member districting

[5] It is not at all clear that any of the plaintiffs' plans, or the plan that the majority now adopts, protects the rights of minority voters better than the legislature's own plan. The record reflects that the legislature took extraordinary steps to assure minority participation in the creation of its plan and to assure that minority interests were adequately protected in the plan it ultimately adopted. After conducting public hearings and seeking the input of leaders of such groups as the St. Paul Urban League, the Urban Coalition of Minneapolis, the Minnesota Indian Affairs Council, the Spanish Speaking Affairs Council, the Council on Black Minnesotans, the Minnesota Council on Asian-Pacific Affairs, and the National Association for the Advancement of Colored People, the legislature developed a plan that included one house district in which minorities constituted a super-majority, two house districts in which minorities constituted a bare majority, one house district in which minorities constituted a near majority, and one senate district in which minorities constituted a near majority. Mem. of the Minn. Legislature in Response to the Emison Pl.'s Proposed Redistricting Plans at 9-11.

schemes and challenges to single-member districting schemes, numerous courts have concluded that the Gingles test applies to both types of voting rights challenges. See e.g., Jeffers v. Clinton, 730 F.Supp. 196, 205 (E.D.Ark. 1989), aff'd, 111 S.Ct. 662 (1991); McDaniels v. Mehfoud, 702 F.Supp. 588, 591 (E.D.Va. 1988), app. dismissed, 927 F.2d 596 (4th Cir. 1991); Hastert v. State Board of Elections, 777 F.Supp. 634, 655 (N.D. Ill. 1991); Neal v. Coleburn, 689 F.Supp. 1426, 1435 (E.D.Va. 1988); Williams v. City of Dallas, 734 F.Supp. 1317, 1413 (N.D.Texas 1990); see also Romero v. City of Pomona, 883 F.2d 1418, 1423 (9th Cir. 1989) (concluding that the three-part Gingles test merely explains which of the indicia of dilution are most relevant in proving a section 2 violation). There has been, in this case, no effort to establish that the Gingles requirements can be met.

Even if the three-part Gingles test does not apply in this case, however, I cannot agree with the majority that the record establishes that voting rights violations exist. Before addressing the precise standard to be applied to section 2 challenges to multi-member districting plans, the Gingles Court reiterated the basic principles that must guide courts considering voting rights cases. The Court noted that although the legislative history accompanying section 2 sets forth a flexible, fact-intensive test for section 2 violations, it also places three limitations on the circumstances in which section 2 violations may be proved:

> First, electoral devices . . . may not be considered per se violative of § 2. Plaintiffs must demonstrate that, under the totality of the circumstances, the devices result in unequal access to the electoral process. . . . Second, the conjunction of an allegedly dilutive electoral mechanism and the lack of proportional representation alone does not establish a violation. . . Third, the

> results test [set forth in § 2 and its legislative history) does not assume the existence of racial bloc voting; plaintiffs must prove it.

Gingles, 106 S.Ct. at 2764 (citations omitted). I believe that in concluding that voting rights violations have been established in this case, the majority disregards each of these three basic principles of voting rights jurisprudence.

The majority's holding is, in effect, a conclusion that a redistricting plan that does not contain a super-majority minority senate district in Minneapolis is an electoral device that is per se violative of section 2.[6] In an effort to establish that the totality of the circumstances show that a plan without a super-majority minority district results in unequal access to the electoral process, the majority searches far beyond the record, ultimately coming to rest upon four supposed indicia of unequal electoral access: a provision of the Minnesota Constitution (repealed more than a century ago) limiting voting rights to white persons, two school desegregation cases from the 1970s, a newspaper article reflecting performance gaps between minority and non-minority students in Minneapolis, and the fact that Chapter 246 pits no incumbent Minneapolis senators against each other. Problems such as school segregation and academic performance gaps, as well as past instances of discriminatory voting practices, are undeniably matters of concern for our society; from the record before this Court, however, I am unable to conclude that the problems reflect or

[6] There may well be merit in creating a district with a super-majority of minority voters as a remedy for a voting rights violation. Rather than turning to the technique as a remedial measure, however, the majority relies on the absence of such districts to establish a violation of the Voting Rights Act. Such a reliance is, I believe, erroneous in law as well as in fact.

result from minority vote dilution at the legislative level. The majority's reliance on these indicia to augment a silent record strains credulity.

Having concluded that a districting plan without a super-majority minority senate district in Minneapolis is a dilutive electoral mechanism, the majority violates the second basic principle of voting rights jurisprudence by concluding that the conjunction of that device and a lack of proportional representation in Minneapolis establishes a violation of section 2. The number of minority legislators from Minneapolis is not proportional to the percentage of minorities who live in Minneapolis. The only minority representative from Minneapolis currently serving in the Minnesota Legislature was elected from a super-majority minority district.[7] Therefore, the majority reasons, the lack of proportional representation flows from the absence of sufficient super-majority minority districts in Minneapolis. Section 2, however, specifically cautions against resting findings of voting rights violations on the lack of proportional representation. See 42 U.S.C. § 1973(b) ("nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population").

Finally, rather than requiring the plaintiffs in this case to

[7] It is worth noting that several legislative districts outside the City of Minneapolis have elected members of minority groups to the Minnesota Legislature, despite the fact that those districts do not contain a super-majority of minority voters. Those districts include Senate District 4, with a total minority population of 15%, House District 650, with a total minority population of 24%, and House District 40A, with a total minority population of 7%. See Minority Population Report dated August 20, 1991, provided to the Special Masters at the September 16, 1991 meeting.

prove the existence of racial bloc voting,[8] the majority assumes its existence. As the Gingles court recognized, "courts and commentators agree that racial bloc voting is a key element of a vote dilution claim." Id. at 2769 (citations omitted). The existence of racial bloc voting is typically proven by statistics that correlate voting patterns with the race of the voter and the candidate. As the majority acknowledges, no such statistics have been advanced in this case; the majority attempts to sidestep this lack of proof by relying on a law review article stating that "racial block voting [is] all but inevitable in the vast majority of cases." Maj. Op. at 23 n. 30 (citing Howard & Howard, The Dilemma of the Voting Rights Act--Recognizing the Emerging Political Equality Norm, 8 Colum. L. Rev. 1615, 1625 (1983)). The majority's assumption that racial bloc voting is "all but inevitable" in this case, however, is precisely the assumption that the Supreme Court and the legislative history accompanying section 2 forbid. The broad, generalized statements of commentators cannot substitute for evidence of racially polarized voting.

The majority's assumption of racially polarized voting appears again in its conclusion that super-majority minority districts are necessary for minorities to exercise their political rights in Minneapolis. The majority reasons that because the 1982 senate district containing the highest concentration of minorities failed to elect a minority representative in the last election, higher concentrations of minorities are a requisite part of a valid redistricting plan. Significantly absent from the record, however, are facts demonstrating that less than super-majority concentrations of

[8] The legal concept of racial bloc voting, or racially polarized voting, refers to the existence of a correlation between the race of voters and the selection of candidates. Gingles, 106 S.Ct. at 2779.

minorities have resulted in limited access to the electoral process. In short, the record simply does not support a finding of voting rights violations.

II. The Necessity of Following State Policy

However, it is immensely important to recognize that, even if the record did support a finding of voting rights violations, the majority's wholesale rejection of the state plan would be unwarranted. Correcting voting rights violations does not require this Court to jettison Minnesota's validly enacted reapportionment plan; any voting rights defects may--indeed, under Upham and Weiser must -- be remedied by modifying the state plan.

To justify abdicating its obligation to follow the state policy embodied in Chapter 246, the majority attempts to distinguish the facts of this case from those in Weiser and Upham. The majority asserts that this Court, unlike those in Weiser and Upham, has before it not only the state's redistricting plan, but the state policies reflected in Minnesota's constitutional requirement of equal apportionment and in the legislature's bipartisan resolution establishing the criteria for its redistricting plan. This, however, is a distinction without a difference, because in my opinion, Chapter 246 conflicts with neither of those statements of state policy. Moreover, if Chapter 246 did conflict with other state policies, Upham and Weiser would require this Court to reconcile the conflicts.

The majority also suggests that it need not follow the state policy expressed in Chapter 246 because it would be difficult to do so. In my opinion, the majority exaggerates the difficulties inherent in basing a court-ordered plan on Chapter 246; the state court, after all, found it possible to correct Chapter 246's constitu-

tional defects.[9] The fact that the majority finds defects based on the Voting Rights Act, and not the U.S. Constitution, does not alter this Court's obligation to limit its remedial measures to correcting those defects; Upham, too, involved voting rights challenges. Moreover, the sole voting rights defect identified by the majority is the lack of a super-majority minority senate district in Minneapolis. Surely a defect in a single district not require this Court to discard the legislative plan in its entirety.[10] Finally, I see nothing in Weiser or Upham limiting the obligation to follow state policy to instances in which it be accomplished with ease.

In substituting its own plan for that of the state, the majority defies the Supreme Court's mandate that reapportionment remedies be limited by the scope and nature of the violation. Upham, 456 U.S. at 42 (citing Whitcomb v. Chavis, 403 U.S. 124 (1971)). More fundamentally, the majority defies the policy o judicial deference to legislative action that underlies the Supreme Court's mandate. This Court attempted, in its injunction, to prohibit the Minnesota court from finalizing its reapportionment plan. The United States Supreme Court rejected that approach. Having failed

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[9] The majority asserts that the parties' failure to provide this Court with a map of Chapter 246 made it impossible for the Court to rely on Chapter 246 in creating its plan. In its consideration of Chapter 246, the state court had before it maps depicting the redistricting plan embodied in Chapter 246. Cotlow v. Growe, No. C8-91-985 at 10, 15 (Minn. Sp. Redistricting Panel, Dec. 9, 1991). If the parties neglected to provide this Court with these resources, it was an oversight that could surely have been easily corrected.

[10] In Upham, the district court devised its own plan for four districts, rejecting the legislature's plan for those districts the Supreme Court held that even though the district court followed the legislature's plan in all other respects, it erred in adopt its own plan in the four districts. In the instant case, the majority's action far exceeds the action struck down in Upham, because here, the majority adopts its own plan not just for a few isolated districts, but for the entire state.

to successfully enjoin the state court's reapportionment plan, the majority, instead of staying its hand allowing the state plan to proceed, reaches out in an invalid a transparent second attempt to accomplish the same purpose.

The people of Minnesota are the real losers in this unprecedented battle between two courts. Hopefully, the United States Supreme Court, upon appropriate application, will quickly move to resolve these issues.

The court's plan of redistricting was developed without regard to partisanship. Adoption of the court's plan insures that partisan motivation, if in fact it existed in the plans presented to us, is not perpetuated.

I respectfully dissent.

/s/
Harry H. MacLaughlin
United States District Court Judge

AO 450 (Rev. 5/85) Judgment in a Civil Case

United States District Court

DISTRICT OF MINNESOTA - FOURTH DIVISION

James Emison, et al

v. **JUDGMENT IN A CIVIL CASE**

Joan Growe, Secretary of State of the
State of Minnesota, et al.

CASE NUMBER: 4-91-202

X **Decision by Court.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that defendant Joan Growe, the duly elected and qualified Secretary of State of the State of Minnesota, in her official capacity, as the chief election officer of the State of Minnesota, and all those acting by and under her authority, accept filings and conduct elections only in accordance with the provisions of this order, and in confirmity with the election statutes of the State of Minnesota which are not inconsistent therewith. Defendant Growe and those acting by and under her authority are enjoined from accepting filings otherwise than in conformity with this order, or from declaring the results of any such election held otherwise than in conformity with the order of

this court, except as may be provided by law for the appeal of this order to the Supreme Court of the United States.

Jurisdiction is retained for the purpose of making any further orders deemed necessary to insure the effectuation of our order adopting a state legislative redistricting plan and a congressional redistricting plan for the State of Minnesota, and this order permanently enjoining interference with said redistricting plans.

Appropriate orders taxing costs against Joan Growe, Secretary of the State of the State of Minnesota, will be entered for Masters' fees and expenses, assistants' fees and expenses, printing expenses, computer expenses, and miscellaneous supplies and equipment.

February 19, 1992 — *Date*

FRANCIS E. DOSAL — *Clerk*

/s/ — *(By) Deputy Clerk*

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

James Emison, Judy Fairbanks, Marie Iverson, Ken Dean, Steve Castillo, Lew Freeman, and Yao Lo, individually and on behalf of all Citizens and Voters of the State of Minnesota similarly situated,	)	Court File No. Civ. 4-91-202
Plaintiffs,	)	
vs.	)	AMENDED COMPLAINT
Joan Growe, Secretary of State of the State of Minnesota; Mark Lundgren, Carver County Auditor, individually and on behalf of all County Auditors of the State of Minnesota,	)	
Defendants.	)	

Plaintiffs, for their cause of action against defendants, allege and state as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this action under the provisions of 28 U.S.C. Section 1331, 28 U.S.C. Section 1343(a)(3)-(4), 28 U.S.C. Section 2284, 42 U.S.C. Section 1973, and 42 U.S.C. Sections 1983 and 1988. Declaratory and injunctive relief are appropriate under 28 U.S.C. Sections 2201 and 2202.

2. Venue is proper under 28 U.S.C. Section 1391.

PARTIES

3. Plaintiffs are citizens and qualified voters of the United States and the state of Minnesota. Plaintiffs reside in the following counties, legislative districts, and congressional districts and are of the racial origin indicated:

Plaintiff	County	Legislative District	Congressional District	Race
James W. Emison	Hennepin	43B	Sixth	White
Judy Fairbanks	Becker	10A	Seventh	Native-American
Marie Iverson	Dakota	38B	Third	White
Ken Dean	Stearns	17B	Seventh	White
Steve Castillo	Ramsey	66B	Fourth	Hispanic
Lew Freeman	Hennepin	60B	Fifth	African-American
Yao Lo	Ramsey	63A	Fourth	Asian

4. Plaintiffs bring this action individually and on behalf of themselves and all other citizens and voters of the United States and the state of Minnesota who are similarly situated by denial of their legal rights through the use of current legislative and congressional districts as further stated below. The class of persons denied their legal rights through the current legislative and congressional districts is so numerous that joinder of all members is impracticable. The legality of the plans of state legislative districts set forth in LaComb v. Growe, 541 F. Supp. 160 (D. Minn. 1982)(Civ. 4-81-152) and reflected in Minnesota Statutes, Sections 2.019 and 2.042-2.702, as utilized and enforced by defendants, presents questions of fact and law common to the class. The legality of the scheme of congressional districts set forth in LaComb v. Growe, 541 F. Supp. 145 (D. Minn. 1982)(Civ. 4-81-414) aff'd sub nom. Orwoll v. LaComb, 456 U.S. 966 (1982), as

utilized and enforced by defendants, presents additional questions of fact and law common to the class. The claims of the named individuals are typical of the claims of the members of the class. The individuals named as plaintiffs will fairly and adequately protect the interests of the class. The prosecution of separate actions by individual members of the class would create a risk of inconsistent or varying adjudications that would establish incompatible standards of conduct for defendants, and defendants have acted and will act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

5. Defendant Joan Growe is the duly elected and qualified Secretary of State of the state of Minnesota. In her official capacity, pursuant to Minnesota Statutes, Chapters 200-211, she is the chief election officer of the state of Minnesota and is responsible for a variety of election duties, such as giving notice of offices to be voted on in the next election, accepting affidavits of candidacy from candidates for certain public offices, supervising the preparation and distribution of ballots, issuing certificates of election to certain successful candidates, receiving election returns, distributing information on election laws, serving on the State Canvassing Board, and other duties necessary for the conduct of elections in the state of Minnesota.

6. Defendant Mark Lundgren is the duly qualified and acting auditor of Carver County, state of Minnesota. In his official capacity, pursuant to Minnesota Statutes, Chapters 200-211, he is the chief election officer for Carver County and is responsible for a variety of election duties, such as receiving registrations to vote, maintaining a current list of registered voters for districts in the county, receiving applications for and processing of absentee ballots, taking filings of candidates for certain elective offices,

furnishing a list of appropriate election judges for election precincts, preparing certain election materials, taking delivery of election returns, tabulating votes, maintaining election records, providing certificates of election to certain successful candidates, and other duties necessary for the conduct of elections in the state of Minnesota.

7. This action is brought against Defendant Mark Lundgren individually and as a representative of a class of all other county auditors in the state of Minnesota, the class being so numerous to make it impracticable to join them in this action. The legality of the plan of state legislative districts set forth in LaComb v. Growe, 541 F. Supp. 160 (D. Minn. 1982)(Civ. 4-81-152) and reflected in Minnesota Statutes, Sections 2.019 and 2.042-2.702, as utilized and enforced by county auditors, presents questions of fact and law common to the class. The legality of the scheme of congressional districts set forth in LaComb v. Growe, 541 F. Supp. 145 (D. Minn. 1982)(Civ. 4-81-414) aff'd sub nom. Orwoll v. LaComb, 456 U.S. 966 (1982) as utilized and enforced by county auditors, presents additional questions of fact and law common to the class. The defenses of the representative party are typical of the defenses of the class and the representative will fairly and adequately protect the interests of the class. The prosecution of separate actions against individual members of the class would create a risk of inconsistent or varying adjudications that would establish incompatible standards for plaintiffs and plaintiffs have acted and will act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

8. Pursuant to 28 U.S.C. Section 2284(b)(2), notice of this action will be given to the Governor and Attorney General of the

state of Minnesota by transmitting to each a copy of this Complaint by certified mail.

COUNT I - CONGRESSIONAL REDISTRICTING

9. Paragraphs 1 - 8 of this Complaint are realleged and incorporated by reference as if fully stated herein.

10. Article I, Section 2 of the Constitution of the United States provides that:

> The house of representatives shall be composed of members chosen every second year by the people of the several states....
>
> * * * *
>
> Representatives...shall be apportioned among the several states. ...

U. S. Const. art. I, §2. This provision guarantees to the citizens of each state that their vote shall be equally effective as any other vote cast in an election and that congressional representatives shall be elected on the basis of equal representation of the individual voters in the state. Further, this provision guarantees that congressional representation shall be equally apportioned throughout a state in districts of equal population.

11. Section 1 of the Fourteenth Amendment to the Constitution of the United States Constitution provides:

> No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

This provision guarantees to the citizens of each state that their vote shall be equally effective as any other vote cast in an election and that congressional representatives shall be elected on the basis of equal representation of the individual voters in the state.

Further, this provision guarantees that congressional representation shall be equally apportioned throughout a state in districts of equal population.

12. Any plan of congressional districts that does not meet constitutional standards discriminates against voters in more highly populated districts while exaggerating the power of voters in less populated districts, in violation of the rights afforded under Article I, Section 2 and the Fourteenth Amendment. Any action of defendants in enforcing or implementing such a plan violates the constitutional rights of plaintiffs and similarly situated citizens and voters of Minnesota.

13. Minnesota's current congressional districts were established and remain in force by continuing order of this Court in LaComb v. Growe, 541 F. Supp. 145 (D. Minn. 1982)(Civ. 4-81-414) aff'd sub nom. Orwoll v. LaComb, 456 U.S. 966 (1982).

14. On information and belief, the United States Department of Commerce, Bureau of Census, has issued statistical data from the 1990 census showing that the congressional districts ordered by this Court are no longer equally apportioned. According to this data, the current populations of the congressional districts, the 1980 populations, and the net and percentage changes are as follows:

District	1980 Population	1990 Population	Net Change	%Change
First	509,460	527,423	+17,963	+3.53%
Second	509,500	480,079	-29,421	-5.77%
Third	509,499	665,555	+156,056	+30.63%
Fourth	509,499	538,416	+29,913	+5.87%
Fifth	509,506	501,550	-7,956	-1.56%
Sixth	509,505	653,112	+143,607	+28.19%
Seventh	509,495	518,162	+8,667	+1.7%
Eighth	509,506	490,799	-18,707	-3.67%

15. The Legislature of the state of Minnesota ("the Legislature") possesses state constitutional authority to prescribe the boundaries of congressional districts at their first session following each federal decennial census. Following the 1980 census, the Legislature failed to establish new congressional districts in accordance with constitutional requirements. Plaintiffs allege on information and belief that the Legislature, currently in its first session since the 1990 census, has received census data showing that congressional districts established by continuing order of this Court in LaComb v. Growe, 541 F. Supp. 145 (D. Minn. 1982)(Civ. 4-81-414) aff 'd sub nom. Orwoll v. LaComb, 456 U.S. 966 (1982) are no longer equally apportioned and the Legislature has failed to reapportion Minnesota's congressional representatives among new districts of equal population. On information and belief, plaintiffs allege that the Legislature will not enact, and the Governor will not sign, legislation drawing new congressional districts in accordance with legal requirements.

16. On information and belief, plaintiffs allege that defendants intend to and will conduct their duties with respect to the 1992 primary and general elections for Minnesota's congressional representatives based on current congressional districts, unless restrained by this Court.

17. Plaintiffs allege that they intend to and will vote in the 1992 primary and general elections for congressional representatives. If these elections are conducted on the basis of current congressional districts, or on the basis of new districts that do not meet legal requirements, plaintiffs and other similarly situated voters and citizens will be denied their constitutional rights.

COUNT II - LEGISLATIVE REDISTRICTING

18. Paragraphs 1 - 16 of this Complaint are realleged and incorporated by reference as if fully stated herein.

19. Section 1 of the Fourteenth Amendment to the Constitution of the United States provides:

> No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

This provision guarantees to the citizens of each state that their vote shall be equally effective as any other vote cast in a federal and state election and that state legislative representatives shall be elected on the basis of equal representation of the individual voters in the state. Further, this provision guarantees that state legislative representation shall be equally apportioned throughout a state in districts of equal population.

20. Any plan of state legislative districts that does not meet constitutional standards unlawfully discriminates against voters in more highly populated districts while exaggerating the power of voters in less populated districts in violation of the rights afforded under the Fourteenth Amendment. Any action of defendants in enforcing or implementing such a plan violates the equal protection and due process rights of plaintiffs and other similarly situated citizens and voters of Minnesota.

21. Minnesota's current state legislative districts were established and remain in force by continuing order of this Court in LaComb v. Growe, 541 F. Supp. 160 (D. Minn. 1982)(Civ. 4-81-152), and are reflected in Minnesota Statutes Sections 2.019 and 2.042-2.702.

22. On information and belief, the United States Department of Commerce, Bureau of Census, has issued statistical data from

the 1990 census showing that the state legislative districts as ordered by this Court are no longer equally apportioned.

23. On information and belief, the United States Department of Commerce, Bureau of Census, has issued statistical data showing substantial increases in minority populations in the state of Minnesota since the prior census. These minority populations include Hispanics, Asians, Native-Americans, and African-Americans.

24. In LaComb v. Growe, 541 F. Supp. 160 (D. Minn. 1982)(Civ. 4-81-152), this Court by an Order dated December 29, 1981, adopted mandatory criteria for valid plans apportioning the Minnesota Legislature. The criteria included a provision that a valid redistricting plan shall preserve the voting strength of minority populations and will, whenever possible, increase the probability of minority representation from areas of sizable concentrations of minority population. On information and belief, the state legislative districts as ordered by this Court no longer comply with that criterion.

25. The Legislature possesses state constitutional authority to prescribe the boundaries of state legislative districts at its first session following each federal decennial census. Following the 1980 census, the Legislature failed to establish new state legislative districts in accordance with legal requirements. Plaintiffs allege on information and belief that the Legislature, currently in its first session since the 1990 census, has received census data showing that state legislative districts established by continuing order of this Court in LaComb v. Growe, 541 F. Supp. 160 (D. Minn. 1982)(Civ. 4-81-152), are no longer equally apportioned and have diluted minority voting strength. The Legislature has failed to reapportion Minnesota's state legislative representation among new districts of equal population and has failed to draw new districts that avoid

minority vote dilution. On information and belief, plaintiffs allege that the Legislature will not enact, and the Governor will not sign, legislation drawing new legislative districts in accordance with legal requirements and the criterion adopted by this Court that a valid plan shall preserve the voting strength of minority populations and, whenever possible, increase the probability of minority representation from areas of sizable concentrations of minority population.

26. On information and belief, plaintiffs allege that defendants intend to and will conduct their duties with respect to the 1992 primary and general elections for state legislative representatives based on current state legislative districts, unless restrained by this Court.

27. Plaintiffs allege that they intend to and will vote in the 1992 primary and general elections for state legislative representatives. If these elections are conducted on the basis of current state legislative districts, or on the basis of new districts that do not meat legal requirements, plaintiffs and other similarly situated voters and citizens will be denied their constitutional rights as guaranteed by the Fourteenth Amendment to the Constitution of the United States and denied their rights under prior orders of this Court.

COUNT III - VOTING RIGHTS ACT, SECTION 2:
WHITE EARTH AND RED LAKE RESERVATIONS

28. Paragraphs 1 - 26 of this Complaint are realleged and incorporated by reference as if fully stated herein.

29. Section 2 of the Voting Rights Act of 1965, as amended, 42 U.S.C. Section 1973 ("Voting Rights Act"), provides that:

> (a) No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in

a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title, as provided in subsection (b) of this section.

(b) A violation of subsection (a) of this section is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) of this section in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: Provided, That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.

The statute guarantees that any plan of state legislative districts shall not be employed to minimize, cancel out, or dilute a racial minority's effective participation in the political process by denying its members less opportunity than other members of the electorate to elect or influence the election of legislators of their choice. Any plan of state legislative districts that has the effect of denying such opportunity and any action of defendants in enforcing or implementing such a plan violate the requirements of the Voting Rights Act.

30. White Earth Reservation ("White Earth"), established by treaty in 1867, is a federally recognized reservation for the White Earth Band of the Minnesota Chippewa Tribe located in the state of Minnesota. White Earth comprises Mahnomen County and

portions of Clearwater County and Becker County, and it contains a significant population of Native-Americans. Additional concentrations of Native-Americans reside near the reservation.

31. Under the current plan for legislative districts as established by this Court in LaComb v. Growe, 541 F. Supp. 160 (D. Minn. 1982)(Civ. 4-81-152), and reflected in Minnesota Statutes Sections 2.019 and 2.042-2.702, White Earth has been split into legislative districts 2B, 9B, and 10A.

32. Red Lake Reservation ("Red Lake"), established by treaty in 1863, is a federally recognized reservation for the Red Lake Band of the Minnesota Chippewa Tribe located in the state of Minnesota. RedLake comprises portions of Beltrami County and Clearwater County, and it contains a significant population of Native-Americans. Additional concentrations of Native-Americans reside near the reservation.

33. Under the current plan for legislative districts as established by this Court in LaComb v. Growe, 541 F. Supp. 160 (D. Minn. 1982)(Civ. 4-81-152), and reflected in Minnesota Statutes Sections 2.019 and 2.042-2.702, Red Lake has been split into legislative districts 1A and 2B.

34. Plaintiffs allege that the unnecessary fragmentation of the White Earth and Red Lake reservations into four separate legislative districts under the current plan of state legislative districts minimizes, cancels out, and dilutes the effective participation in the political process by Native-Americans residing on and near those reservations, denying them equal opportunity to elect or influence the election of representatives of their choice, in violation of their rights afforded under the Voting Rights Act. Plaintiffs further allege, on information and belief, that a state legislative district could be created that would not so dilute the Native-American vote on and near these reservations.

35. On information and belief, the Legislature has been aware since 1982 that White Earth and Red Lake are fragmented into four legislative districts, thereby diluting the Native-American vote on and near these reservations for state legislative races. During that time, the Legislature failed to draw new districts removing this fragmentation. The Legislature possesses state constitutional authority to prescribe the boundaries of state legislative districts at its first session following each federal decennial census. Plaintiffs allege on information and belief that the Legislature, currently in its first session since the 1990 census, continues to be aware of the fragmentation and minority vote dilution on and near the reservations under the Voting Rights Act and has failed to establish new districts in compliance with federal law. On information and belief, plaintiffs allege that the Legislature will not enact, and the Governor will not sign, legislation drawing new legislative districts in accordance with the requirements of the Voting Rights Act.

36. On information and belief, plaintiffs allege that defendants intend to and will conduct their duties with respect to the 1992 primary and general elections for state legislative representatives based on current state legislative districts, unless restrained by this Court.

37. Plaintiff Judy Fairbanks is an enrolled member of the White Earth Band of the Minnesota Chippewa Tribe and resides on the White Earth reservation. She alleges that she intends to and will vote in the 1992 primary and general elections for state legislative representatives. If these elections are conducted on the basis of current state legislative districts, she and other similarly situated voters and citizens will be denied their rights under the Voting Rights Act.

COUNT IV - VOTING RIGHTS ACT, SECTION 2: DISTRICT 60B

38. Paragraphs 1 - 36 of this Complaint are realleged and incorporated by reference as if fully stated herein.

39. Section 2 of the Voting Rights Act of 1965, as amended, 42 U.S.C. Section 1973 ("Voting Rights Act"), provides that:

> (a) No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title, as provided in subsection (b) of this section.
>
> (b) A violation of subsection (a) of this section is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) of this section in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: Provided, That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.

The statute guarantees that any plan of state legislative districts shall not be employed to minimize, cancel out, or dilute a racial minority's effective participation in the political process by denying its members less opportunity than other members of the

electorate to elect or influence the election of representatives of their choice. Any plan of state legislative districts that has this effect and any action of defendants in enforcing or implementing such a plan, violates the requirements of the Voting Rights Act.

40. District 60B is a current state legislative district located in south Minneapolis. On information and belief, District 60B had a 33% minority population at the formation of the district in 1982 under the current plan for legislative districts as established by this Court in LaComb v. Growe, 541 F. Supp. 160 (D. Minn. 1982), and reflected in Minnesota Statutes Sections 2.019 and 2.042-2.702. Due to population growth and population shifts, the minority population of District 60B has, on information and belief, grown to 46% as of the 1990 census.

41. On information and belief, District 60B is adjacent to or near several other state legislative districts in south Minneapolis that, as of the 1990 census, have substantial minority populations. These districts include Districts 59A, 59B, 60A, 61A, 61B, 62A, and 62B.

42. Plaintiffs allege that the current plan of state legislative districts unnecessarily fragments the minority population in south Minneapolis into multiple districts and minimizes, cancels out, and dilutes the effective participation in the political process by minorities residing in south Minneapolis, denying them equal opportunity to elect or influence the election of representatives of their choice in violation of their rights under the Voting Rights Act. Plaintiffs further allege, on information and belief, that one or more new state legislative districts could be created that would not so dilute the vote of the minority population residing in current District 60B and adjacent districts.

43. The Legislature possesses state constitutional authority to prescribe the boundaries of state legislative districts at its first

session following each federal decennial census. Plaintiffs allege on information and belief that the Legislature, currently in its first session since the 1990 census, is aware of the fragmentation and minority vote dilution in south Minneapolis under the Voting Rights Act and has failed to establish new districts in compliance with federal law. On information and belief, plaintiffs allege that the Legislature will not enact, and the Governor will not sign, legislation drawing new legislative districts in accordance with the requirements of the Voting Rights Act.

44. On information and belief, plaintiffs allege that defendants intend to and will conduct their duties with respect to the 1992 primary and general elections for state legislative representatives based on current state legislative districts, unless restrained by this Court.

45. Plaintiff Lew Freeman is an African-American and a resident of District 60B. He alleges that he intends to and will vote in the 1992 primary and general elections for state legislative representatives. If these elections are conducted on the basis of current state legislative districts, he and other similarly situated voters and citizens will be denied their rights under the Voting Rights Act.

WHEREFORE, plaintiffs pray for the following relief:

a. That a special three judge court be called to hear and determine this matter, pursuant to 28 U.S.C. Section 2284(a).

b. That the Court declare that the plan of congressional districts ordered in LaComb v. Growe. 541 F. Supp. 145 (D. Minn. 1982)(Civ. 41-81-474) aff 'd sub nom. Orwoll v. LaComb, 456 U.S. 966 (1982) violates plaintiffs' constitutional rights under Article I, Section 2 and the Fourteenth Amendment to the Constitution of the United States.

c. That the Court declare that the plan of state legislative districts as ordered in LaComb v. Growe, 541 F. Supp. 160 (D. Minn. 1982)(Civ. 4-81-152), and reflected in Minnesota Statutes Sections 2.019 and 2.042-2.702, violates plaintiffs' rights of due process and equal protection under the Fourteenth Amendment to the Constitution of the United States.

d. That the Court declare that the plan of state legislative districts as ordered in LaComb v. Growe, 541 F. Supp. 160 (D. Minn. 1982)(Civ. 4-81-152), and reflected in Minnesota Statutes Sections 2.019 and 2.042-2.702, violates the requirements of the Voting Rights Act by unlawfully diluting the voting strength of Native-Americans residing on or near the White Earth and Red Lake reservations.

e. That the Court declare that the plan of state legislative districts as ordered in LaComb v. Growe, 541 F. Supp. 160 (D. Minn. 1982)(Civ. 4-81-152), and reflected in Minnesota Statutes Sections 2.019 and 2.042-2.702, violates the requirements of the Voting Rights Act by unlawfully diluting the voting strength of the minority population residing in or near District 60B.

f. That the Court dissolve its orders establishing the plans for congressional and state legislative districts made in LaComb v. Growe, 541 F. Supp. 145 (D. Minn. 1982) (Civ. 41-81-414) aff 'd sub nom. Orwoll v. LaComb, 456 U.S. 966 (1982) and LaComb v. Growe, 541 F. Supp. 160 (D. Minn. 1982) (Civ. 4-81-152).

g. That the Court issue a permanent injunction and judgment decreeing that the current plans for congressional and state legislative districts are not now valid plans of state legislative and congressional apportionment.

h. That the Court issue a permanent injunction enjoining defendants from taking any action related to carrying out their official duties in conducting primary or general elections for state legislative and congressional representatives based on the districts ordered in LaComb v. Growe, 541 F. Supp. 145 (D. Minn. 1982) (Civ. 41-81-414) aff'd sub nom. Orwoll v. LaComb, 456 U.S. 966 (1982) as reflected in Minnesota Statutes Sections 2.019 and 2.042-2.702, and LaComb v. Growe, 541 F. Supp. 160 (D. Minn. 1982) (Civ. 4-81-152).

i. That the Court inform the Legislature and the Governor of the pendency of this action and that the Court will retain jurisdiction to determine if the Legislature has passed and the Governor has signed legislation forming new congressional and state legislative districts that meet legal requirements; that should the Legislature and the Governor fail to enact such legislation, the Court will consider evidence, determine, and order valid plans for congressional and state legislative districts.

j. That the Court consider evidence from plaintiffs, determine, and order valid plans for new congressional and state legislative districts in the event the Legislature and the Governor fail to enact legislation establishing such districts in accordance with legal requirements.

k. That should the Court consider and establish new plans, or review legislative plans, for state legislative districts, the Court require the maximization of Native-American voting strength on and near the White Earth and Red Lake reservations through the consolidation, to the extent possible, of concentrations of Native-Americans on or near the reservations into a single state legislative district.

l. That should the Court consider and establish new plans, or review legislative plans, for state legislative districts, the Court require the maximization of the voting strength of the minority population currently residing in District 60B through the creation of a new state legislative district that consolidates that minority population with adjacent or nearby minority populations currently in other state legislative districts.

m. That should the Court consider and establish new plans, or review legislative plans for state legislative districts, the Court apply to such plans the criterion of preserving voting strength of minority populations and, whenever possible, increasing the probability of minority representation from areas of sizable concentrations of minority population in accordance with the Court's Order dated December 29, 1981 in LaComb v. Growe, 541 F. Supp. 160 (D. Minn. 1982)(Civ. 4-81-152).

n. That the Court order defendants to pay plaintiffs' reasonable attorneys' fees and expenses, expert fees and costs, and other expenses incurred in this action, pursuant to 42 U.S.C. Section 1988.

o. That the Court order such other relief as is just and equitable in the circumstances.

Dated: 3/29, 1991 POPHAM, HAIK, SCHNOBRICH & KAUFMAN, Ltd.

By /s/

Bruce D. Willis Reg. No. 117572
Benson K. Whitney Reg. No. 184019
3300 Piper Jaffray Tower 333-4800
222 Ninth Street South
Minneapolis, Minnesota 55402

Attorneys for plaintiffs James Emison, Judy Fairbanks, Marie Iverson, Ken Dean, Steve Castillo, Lew Freeman, and Yao Lo.

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

James Emison, Judy Fairbanks, Marie Iverson, Ken Dean, Steve Castillo, Lew Freeman, and Yao Lo, individually and on behalf of all Citizens and Voters of the State of Minnesota similarly situated, Plaintiffs,	) Court File No. Civil. 4-91-202
vs.	) DESIGNATION OF THREE-JUDGE
Joan Growe, Secretary of State of the State of Minnesota; Mark Lundgren, Carver County Auditor, individually and on behalf of all County Auditors of the State of Minnesota, Defendants.	) DISTRICT COURT

****

Upon the application of the requesting judge, The Honorable Harry H. MacLaughlin, for the designation of a three-judge court to hear and determine the above action, I find that the action is one required by Act of Congress to be heard and determined by a three-judge district court;

Therefore, pursuant to 28 U.S.C. § 2284(b)(1), I, Donald P. Lay, Chief Judge of the United States Court of Appeals for the Eighth Circuit, hereby designate the Honorable Donald P. Lay, United States Circuit Court Judge, and the Honorable Paul

Magnuson, United States District Court Judge, to serve with the Honorable Harry H. MacLaughlin, United States District Court Judge, as members of, and with him to constitute the District Court to hear and determine this action.

DATED: April 8, 1991

/s/
Donald P. Lay, Chief Judge
Eighth Circuit

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
OFFICE OF THE CLERK

514 U.S. COURTHOUSE
110 SOUTH 4TH STREET
MINNEAPOLIS, MN 55401

FRANCIS E. DOSAL. CLERK
(612) 348-1821
FTS: 777-1821

May 6th, 1991

Re: James Emison, et al -vs- Joan Growe, et al Civil 4-91-202

Dear Counsel:

As you know the above captioned case has been designated to be tried by a Three Judge Panel. Because of the peculiarity of this case, we are requesting that the Clerk's Office be provided with an original and five copies of every pleading that is filed on this matter.

If you have any questions, please don't hesitate to contact us.

Thank you.

Truly yours,

/s/

Luis R. Borges
Deputy Clerk

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

James Emison, Judy Fairbanks, Marie Everson, Ken Dean, Steve Castillo, Lew Freeman, and Yao Lo, individually and on behalf of all Citizens and Voters of the State of Minnesota similarly situated,

Plaintiffs,

v.

Joan Growe, Secretary of State of the State of Minnesota; and Mark Lundgren, Carver County Auditor, individually and on behalf of all County Auditors of the State of Minnesota,

Defendants.

Cv. No. 4-91-202

ORDER

The above matter was before the undersigned United States Magistrate Judge on the motion of the Seventy-seventh Minnesota State House of Representatives and the Seventy-seventh Minnesota State Senate to intervene as defendants in this matter. The undersigned having been advised that the parties to this matter either are not opposed to, or take no position with respect to, the motion to intervene,

IT IS HEREBY ORDERED that the motion of the Seventy-seventh Minnesota State House of Representatives and the

Seventy-seventh Minnesota State Senate to intervene in this matter is GRANTED.

DATED: May 15, 1991

/s/
FRANKLIN L. NOEL
United States Magistrate Judge

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

NOTICE OF PRETRIAL STATUS
AND SCHEDULING CONFERENCE

James Emison, et al. vs. Joan Growe, Secretary of the State of Minnesota, et al.
Civil 4-91-202

Bruce D. Willis & Benson K. Whitney
John R. Tunheim
Robert A. Nicklaus
Michael A. Fahey
John D. French & Michael L. Cheever

Pursuant to Rule 16 of the Federal Rules of Civil Procedure, a pretrial status and scheduling conference will be held on Monday, July 22, 1991 at 3:30 p.m. in Courtroom #3, Seventh Floor, 316 North Robert Street, St. Paul, Minnesota, 55101, before the Honorable Donald P. Lay, the Honorable Harry H. MacLaughlin and the Honorable Paul A. Magnuson.

At least five days prior to the conference, counsel shall submit a complete written statement of the case to the Clerk of the Court. Please submit an original and three copies of the statement. Opposing counsel should also be served at least five days prior to the conference. The statement of the case shall include:

(1) a concise statement of the facts;
(2) the specific legal or statutory basis for the claim(s) or defense(s);
(3) names of involved insurance companies, if any;
(4) whether a timely jury demand has been made or will be made in the future;
(5) estimated length of trial, including voir dire;
(6) estimated length of time needed for discovery;
(7) any other appropriate topics.

Consideration will be given at the conference to settlement, stipulations, pretrial scheduling, anticipated trial schedule and other matters suggested by the Court and counsel. Pretrial scheduling will include the following deadlines: third party actions, amendments to pleadings, discovery completion, non-dispositive motions and dispositive motions.

Counsel who will be trying the case should make every effort to be present at the conference. If this is not possible, substitute counsel should be arranged. Counsel attending the conference must have settlement authority or be accompanied by their clients to facilitate settlement.

Dated: /s/
Michael M. Chutich
Calendar Clerk to Judge MacLaughlin

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

James Emison, Judy Fairbanks, Marie Iverson, Ken Dean, Steve Castillo, Lew Freeman, and Yao Lo, individually and on behalf of all Citizens and Voters of the State of Minnesota similarly situated,

Plaintiffs,

v.

Joan Growe, Secretary of State of the State of Minnesota; and Mark Lundgren, Carver County Auditor, individually and on behalf of all County Auditors of the State of Minnesota; the Seventh-seventh Minnesota State House of Representatives; and the Seventy-seventh Minnesota State Senate,

Defendants.

Civil File No. 4-91-202

ORDER

Before: LAY, Circuit Judge, MacLAUGHLIN and MAGNUSON, District Judges.

A preliminary pretrial hearing was held in this case on July 22, 1991. After oral presentations by the respective counsel, the court entered the following order:

The question of a stay or abstention by the federal court pending legislative action or state court proceedings involving similar issues shall be processed as follows:

1. All motions for stay and motions for this court to abstain pending further proceedings by the state legislature and state court shall be filed, with accompanying briefs, on or before August 2, 1991;
2. All objections to said motions for stay or abstention, with accompanying briefs, shall be filed on or before August 9, 1991; and
3. The movants may file a reply brief on or before August 16, 1991.

IT IS SO ORDERED.

DATED: July 23, 1991.

FOR THE COURT:

/s/
DONALD P. LAY, Chief Judge
U.S. Court of Appeals for the
Eighth Circuit, sitting by
special designation

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

James Emison, et al.

v. Civil No. 4-91-202

Joan Growe, Secretary of State
of the State of Minnesota, et al.

Duane Benson, et al.,

v. Civil No. 4-91-603
from DSD
Joan Growe, Secretary of State to HHM
of the State of Minnesota, et al.

ORDER FOR REASSIGNMENT OF COMPANION CASE

Case No. 4-91-202 having been assigned to Judge Harry H. MacLaughlin and Case No. 4-91-603 having later been assigned to Judge David S. Doty, and said matters being companion cases,

IT IS HEREBY ORDERED that Case No. 4-91-603 be assigned to Judge MacLaughlin, nunc pro tunc, without use of the case assignment system.

IT IS FURTHER ORDERED pursuant to this Court's Assignment of Cases Order dated June 11, 1991, the Clerk of Court shall void and reuse a card on the Civil Rights list of the automated case assignment system.

IT IS FINALLY ORDERED that a copy of this order shall be filed in each of the above respective files.

Dated: August 16, 1991 /s/
Harry H. MacLaughlin, Judge
United States District Court

Dated: August 16, 1991 /s/
David S. Doty, Judge
United States District Court

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

James Emison, Judy Fairbanks, Marie Iverson, Ken Dean, Steve Castillo, Lew Freeman, and Yao Lo, individually and on behalf of all Citizens and Voters of the State of Minnesota similarly situated,

Plaintiffs,

and

Patricia Cotlow, Phillip Krass, Sharon LaComb, James Stein, and Theodore Suss, individually and on behalf of all Citizens of Minnesota similarly situated,

Intervening Plaintiffs,

vs.

Joan Growe, Secretary of State of the State of Minnesota; Mark Lundgren, Carver County Auditor, individually and on behalf of all County Auditors of the State of Minnesota,

Defendants,

and

The Seventy-seventh Minnesota

Civil File No. 4-91-202

ORDER

State House of Representatives and the Seventy-seventh Minnesota State Senate,

Defendant-Intervenors.

AND

Duane Benson, Terry Dempsey, Delores Hettig, Richard Harmon, David E. Peterson, E.M. Patricia Pidcock, and Frank Ringsmuth,

Plaintiffs,

vs.

Joan Growe, Secretary of State of the State of Minnesota,

Defendant.

Court File No. 4-91-603

Pursuant to memorandum opinion filed this date, this court orders as follows:

1. The motion for intervention by Patricia Cotlow, et al. is hereby granted.
2. The action filed by Benson, Dempsey, et al. v. Growe, et al. (Court File No. 4-91-603) is hereby consolidated with the action entitled Emison, et al. v. Growe, et al. (Court File No. 4-91-202).
3. The motion to defer pending further legislative proceeding in the above entitled actions is hereby granted.
4. The motion to abstain pending further state proceedings is hereby denied.
5. The motion to enjoin pending state court proceedings is hereby denied.

6. The redistricting plan for the Minnesota House and Minnesota Senate as well as the congressional districts for the State of Minnesota shall be presented to the court on or before January 20, 1992.

IT IS SO ORDERED.

DATED: August 21, 1991

/s/
Donald P. Lay, U.S. Court of Appeals for the 8th Circuit

/s/
Harry H. MacLaughlin, U.S. District Court

/s/
Paul Magnuson, U.s. District Court

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

James Emison, Judy Fairbanks, Marie Iverson & Ken Dean, Steve Castillo, Lew Freeman, and Yao Lo, individually and on behalf of all Citizens and Voters of the State of Minnesota similarly situated,

Plaintiffs,

and

Patricia Cotlow, Phillip Krass, Sharon LaComb, James Stein, and Theodore Suss, individually and on behalf of all Citizens of Minnesota Similarly situated,

Intervening Plaintiffs,

vs.

Joan Growe, Secretary of State of the State of Minnesota; Mark Lundgren, Carver County Auditor, individually and on behalf of all County Auditors of the State of Minnesota,

Defendants,

and

The Seventy-seventh Minnesota

Civil File No. 4-91-202

MEMORANDUM OPINION

State House of Representatives;
and the Seventy-seventh Minnesota
State Senate,

Defendant Intervenors.

AND

Duane Benson, Terry Dempsey, Delores Hettig, Richard Harmon, David E. Peterson, E.M. Patricia Pidcock, and Frank Ringsmuth,

Plaintiffs,

vs.

Joan Growe, Secretary of State of the State of Minnesota,

Defendant.

Court File No. 4-91-603

Before CHIEF JUDGE LAY, Circuit Judge, MacLAUGHLIN, District Judge, and MAGNUSON, District Judge.

PER CURIAM

This action was filed on March 18, 1991, by plaintiffs on behalf of a class of Minnesota citizens and voters. Plaintiffs allege that the current legislative and congressional districts within the State of Minnesota violate the Fourteenth Amendment of the

United States Constitution as well as Section 2 of the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973 (1988).[1]

Among the plaintiffs bringing this action are a Native-American, an African-American, an Hispanic-American, and an Asian-American. The defendants are the Secretary of State of Minnesota, Joan Growe, and a proposed class of county auditors. The defendant intervenors in the case are the Seventy-seventh Minnesota State House of Representatives and the Seventy-seventh Minnesota State Senate. The plaintiff intervenors are a group of Minnesota voters and citizen who commenced an action in state court, asserting that Minnesota's legislative and congressional districts are violative of the state and federal Constitutions. Pursuant to 28 U.S.C. § 2284(a), (b)(1) (1988), a three-judge panel was designated by the Chief Judge of the circuit to hear and decide the case.

On January 24, 1991, a group of Minnesota citizens and voters commenced a redistricting action in Minnesota state court, Cotlow v. Growe, State of Minnesota, Special District Apportionment Panel (MX 91-001562), previously filed in Hennepin County District Court, State of Minnesota (Court File No. 91-1562). As indicated, this group of plaintiffs has petitioned the court to intervene in the present action and by this memorandum order, that petition for intervention is granted.

During its 1991 session, the Minnesota Legislature passed Chapter 246, S.F. No. 1571, a bill redrawing the state legislative

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[1] The plaintiffs claim that fragmentation of the White Earth and Red Lake Reservations into multiple legislative districts under the current plan unlawfully dilutes the Native-American vote. They further allege that the current plan of state legislative districts unnecessarily dilutes the vote of the minority population residing in District 60(b) and adjacent districts.

districts.[2] On August 2, 1991, a Minnesota district court held that the Governor of Minnesota failed to properly veto Chapter 246 and consequently allowed that bill to become law. Seventy-seventh Minnesota State Senate and Seventy-seventh Minnesota State House of Representatives v. Carlson, No. C3-91-7547 (Minn. Dist. Ct., 2d Judicial Dist., Aug. 2, 1991). On August 9, 1991, a new federal action was commenced by another group of Minnesota voters who claim that the plan of legislative districts in Chapter 246 violates both the Minnesota and the United States Constitution. See Benson v. Growe, No. 4-91-603 (D. Minn.). That case is now ordered consolidated with the first federal action.

According to the state defendants, the redistricting committees of both the House and Senate plan to meet by September, 1991 to refine Chapter 246 to remove any possible constitutional deficiencies in the bill. The defendants assert that the Minnesota Legislature expects to pass legislation correcting Chapter 246 in January, 1992. The defendants anticipate that the Governor will either approve the bill or the Legislature will override a veto. They claim that the legislative districts will be established in January, 1992. The defendants also assert that the Legislature expects to enact congressional redistricting legislation in January, 1992. It is urged that this court defer not only to the state court proceedings but also to the legislative action that will take place in January, 1992.

The Secretary of State's brief indicates that legislative and congressional redistricting must be completed by March 24, 1992, in order for the 1992 elections to proceed smoothly. This date is

[2] This bill does not attempt to redistrict congressional lines. According to the state defendants, congressional redistricting will not be addressed by the state legislature until January, 1992.

twenty-five weeks before the state primary. According to the Secretary of State, this will allow the local governments an opportunity to redraw precinct lines which, of course, cannot be done before the legislature has been reapportioned. See 1991 Minn. Laws Ch. 349 (H.F. 635). According to the Secretary of State, this deadline also gives the candidate nomination process enough time to work and allows candidates to fulfill their six month residency requirements.

Deference

The threshold question before our court is the motion by the party defendants and the intervenors that this court should defer further action pending legislative approval of a valid redistricting plan and should allow the state judiciary time to assess such plan and either approve it or draw up a plan of its own. The primary authority for this motion is the Supreme Court's decision in Scott v. Germano, 381 U.S. 407 (1965). In Germano, the districting plans for the Illinois Senate were challenged in both federal and state court. The Supreme Court stated as follows:

> We believe that the District Court should have stayed its hand. The power of the judiciary of a State to require valid reapportionment or to formulate a valid redistricting plan has not only been recognized by this court but appropriate action by the States in such cases has been specifically encouraged. . . .
>
> . . . The case is remanded with directions that the District Court enter an order fixing a reasonable time within which the appropriate agencies of the State of Illinois, including its Supreme Court, may validly redistrict the Illinois State Senate; provided that the same be accomplished within ample time to permit such plan to be utilized in the 1966 election of the

members of the State Senate, in accordance with the provisions of the Illinois election law.

Id. at 409. In directing the district court to abstain, the supreme Court stated:

> The District court shall retain Jurisdiction of the case and in the event a valid reapportionment plan for the State Senate is not timely adopted it may enter such orders as it deems appropriate, including an order for a valid reapportionment plan for the State Senate or an order directing that its members be elected at large pending a valid reapportionment by the State itself.

Id. at 409-10.

As the Germano Court pointed out in its directive to the district court, the plan had to be timely adopted and the district court was to retain jurisdiction until a valid plan had been adopted. All the parties in the present case recognize that time is of the essence in making certain that a valid plan is in place in time for the 1992 elections of the members of the State Senate and House, in accordance with the provisions of the Minnesota election laws.

However, we find Germano distinguishable from the present case on two grounds. First, in Germano the action had been commenced in state court in April, 1964, almost two years prior to the time of the election. Upon appeal, the Supreme Court of Illinois held the composition of the Illinois Senate invalid on February 4, 1965, but expressed confidence that the General Assembly would perform its duty to enact a constitutionally valid plan during its then current session, which expired on July 1, 1965. It is important to note that the Supreme Court of Illinois retained Jurisdiction of the case so that it could take such affirmative action as necessary to ensure that a valid plan would be in place for the 1966 election. Thus, one of the distinguishing features of Germano is that the highest court of the state retained jurisdiction so that it

would have time to approve a constitutionally valid plan in the event the Illinois General Assembly failed to act.

In addition, it is clear from the Illinois Supreme Court's holding that the General Assembly would have to enact a reapportionment plan by July 1, 1965, which again was more than a year before the 1966 election. In the present situation, the state case is now just beginning in the state district court. A recent scheduling order has been adopted by the state court with an announcement that it will issue a final redistricting plan on December 20, 1991. We recognize that an appeal from such a court ordered plan would lie to either the Minnesota Court of Appeals or to the Minnesota Supreme Court and that the time necessary for such appellate review would certainly move the case into the early or middle part of 1992. More significantly, the process in the state courts fails to anticipate that final legislative action on both the state and congressional districts will not be completed by the state legislature until January, 1992.

We also note that in the present federal proceedings a Native-American voter and voters from other minority groups have alleged that the current legislative and congressional districts violate Section 2 of the Voting Rights Act of 1965. Section 2 reads as follows:

> (a) No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United states to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title, as provided in subsection (b) of this section.

42 U.S.C. § 1973(a) (1988). The state court action does not contain similar allegations. Even if the state court petition is amended to include such allegations, we recognize that in general minority citizens have the right to come to federal court to assert their federal claims and do not have to exhaust state remedies to vindicate their right to have & federal court adjudicate their claims. See Lane v. Wilson, 307 U.S. 268, 274 (1939) (holding that a party generally may resort to federal court without having first exhausted the Judicial remedies of the state courts). Although we recognize that state courts are the final expositors of state law, we also recognize the primacy of federal courts in resolving questions of federal law. See England v. Louisiana State Board of Medical Examiners, 375 U.S. 411, 415-16 (1964).

The present action implicates the Voting Rights Act of 1965. In Harman v. Forssenius, 380 U.S. 528 (1965), the Supreme Court held that a district court did not abuse its discretion in refusing to abstain to allow the Virginia courts to determine whether a Virginia statute impaired the right to vote in federal elections. The Court indicated that abstention is improper in voting rights cases, stating that "[t]he right to vote freely for the candidate of one's choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government.'" Id. at 537 (quoting Reynolds v. Sims, 377 U.S. 533, 555 (1964)). The court also noted that "[t]he right [to vote] is fundamental 'because [it is] preservative of all rights.'" Id. (quoting Yick Wo v. Hopkins, 118 U.S. 356, 370 (1886)).

Moreover, the Court recognized the dangers associated with applying traditional abstention principles in voting rights cases. The Court stated that "[given] the importance and immediacy of the problem, and the delay inherent in referring questions of state law to state tribunals, it is evident that the District Court did not

abuse its discretion in refusing to abstain." Id. (footnote omitted); see also Edwards v. Sammons, 437 F.2d 1240, 1244 (5th Cir. 1971) (indicating that the delay caused by abstention is not to be countenanced in cases involving the right to vote).

Whatever proposed plan the state agencies ultimately submit must not violate the federal voting rights of the claimants. Accordingly, this court must appraise any reapportionment plan in this light.

Notwithstanding our concerns that deference to the state courts would provide difficult time constraints to make certain that a valid plan is implemented by March, 1992, we do recognize that the Judiciary, whether it be the state court or the federal court, should not substitute its judgment for legislative action in redistricting within a state for purposes, of the House or Senate or for purposes of drawing lines, for valid congressional districts.

Several cases emphasize the proper deference to be given to the legislative function in this instance. In fact, court drawn plans require even greater scrutiny than legislative plans. See Wise v. Lipscomb, 437 U.S. 535, 540 (1978). The Supreme Court stated in White v. Weiser, 412 U.S. 783 (1973):

> From the beginning, we have recognized that "reapportionment is primarily a matter for legislative consideration and determination, and that judicial relief becomes appropriate only when a legislature fails to reapportion according to federal constitutional requisites in a timely fashion after having had an adequate opportunity to do so." Reynolds v. Sims, 377 U.S. 533, 586 (1964). . . . We have adhered to the view that state legislatures have "primary jurisdiction" over legislative reapportionment. See Maryland Committee for Fair Representation v. Tawes, 377 U.S. 656, 676 (1964); Davis v. Mann, 377 U.S. 678, 693 (1964); Roman v.

Sincock, 377 U.S. 695, 709-710, 711-712 (1964); Burns v. Richardson, 384 U.S., at 84-85; Ely v. Klahr, 403 U.S. 108, 114 (1971); Whitcomb v. Chavis, 403 U.S. 124, 160-161 (1971); Sixty-seventh Minnesota State Senate v. Beens, 406 U.S. 187, 195-201 (1972); Mahan v. Howell, 410 U.S., at 327. Just as a federal district court, in the context of legislative reapportionment, should follow the policies and preferences of the State, as expressed in statutory and constitutional provisions or in the reapportionment plans proposed by the state legislature, whenever adherence to state policy does not detract from the requirements of the Federal constitution, we hold that a district court should similarly honor state policies in the context of congressional reapportionment. In fashioning a reapportionment plan or in choosing among plans, a district court should not pre-empt the legislative task nor "intrude upon state policy any more than necessary." Whitcomb v. Chavis, supra, at 160. Id. at 794-95; see also Upham v. Seaman, 456 U.S. 37, 41-42 (1982). In Weiser, the Court emphasized that a district court should not choose between two possible redistricting plans without giving deference to the plan proposed by the state legislature. Id. at 792-96.

The Legislature and the Secretary of State urge this court to give deference to legislative function. We interpret Germano as requiring both state and federal courts to defer to the legislature to draw a valid redistricting plan unless the legislature fails to act in a timely fashion. The state defendants assert that Chapter 246 contains the framework of a reapportionment plan that only needs refinement by the Legislature to be valid. The defendants claim that legislative committees will meet in the fall of 1991 to devise a plan that will be presented to the Legislature in January, 1992.

We feel this court should refrain from adopting a court ordered plan to allow the legislative function to take place. We, therefore, direct the state defendants to submit both a legislative and congressional plan to this court on or before January 20, 1992. This court will hold hearings shortly thereafter to ascertain the validity of the plans so that both the legislative and congressional plans can be in place in March, 1992.

We adopt such a schedule and exercise our discretionary power to defer to the state Legislature in the present case under the good faith allegation made by the Minnesota Legislature. We recognize that the newly filed federal suit challenging Chapter 246 is now before the court. However, we feel that the Legislature should be allowed the opportunity to revise and amend the bill in January, 1992. Under the circumstances, we conclude that it is premature to hold hearings on the validity of the present legislative plan. We will wait until January 21, 1992 to consider the constitutional validity of the plans.

In light of the time constraints and the important federal rights at stake, we should not abstain and defer to the state courts. Under the circumstances, it would be difficult for the state judicial processes, including the Minnesota Supreme Court, to approve the new legislative plan by March, 1992. Even assuming the state court continues to exercise its jurisdiction over the case, whatever plan that it approves would have to be reviewed by this court in terms of the challenges made to the plan under Section 2 of the Voting Rights Act. We are realistic enough to recognize that such a challenge would take considerable time and, therefore, to completely abstain in this case until after the state court acts on the plan proposed by the legislature on or before January 20, 1992, would not be realistic. Cf. Skolnick v. State Electoral Board of Illinois, 336 F. Supp. 839, 870-71 (1971) (enjoining state

Supréme Court mandamus action which sought to modify or set aside the federal court's order adopting a congressional redistricting plan because the nominating petitions were due within four or five weeks).

In deferring to the Legislature and its proposed time frame, we recognize the contingency that the state legislature may not be able to draw up a constitutional plan. For the court to wait until January 21, 1992, to appraise the constitutionality of such a plan and not to have the machinery established to effect a court plan would necessitate a radical departure from Minnesota law and might require legislative and congressional officials to be elected at large. No one wants to reach such a state of emergency. On this basis, this court, recognizing the contingency that a legislative plan may not be constitutionally valid, will soon appoint Masters to appraise both the state legislative districts and the congressional districts. We hereby direct the parties to submit any criteria on which they feel district lines should be drawn to this court no later than October 1, 1991. The court may wish to schedule hearings concerning these criteria after October 1, 1991. However, we wish to point out that this course of action by the court is simply a contingent one that will result in a court ordered plan only in the event that the state legislative body is unable to effect a plan that complies with the United States Constitution and with Section 2 of the voting Rights Act on or before January 20, 1992.

The motion to defer for further legislative action is hereby granted. The motion of the state defendants to otherwise completely defer from review of any legislative plan is denied. The state parties are directed to present the legislative plan for state and congressional redistricting to this court on or before January 20, 1992. This court retains jurisdiction to approve or disapprove of

such plan at that time, or to take any other appropriate action deemed necessary.

In view of our opinion deferring to state legislative action, the plaintiffs' motion requesting this court to enjoin the state courts is hereby denied.

IT IS SO ORDERED.

DATED: August 21, 1991

/s/
Donald P. Lay, U.S. Court of
Appeals for the 8th Circuit

/s/
Harry H. MacLaughlin,
U.S. District Court

/s/
Paul Magnuson,
U.S. District Court

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

James Emison, Judy Fairbanks, Marie Iverson, Ken Dean, Steve Castillo, Lew Freeman, and Yao Lo, individually and on behalf of all Citizens and Voters of the State of Minnesota similarly situated,

Plaintiffs,

and

Civil File No. 4-91-202

ORDER APPOINTING SPECIAL MASTERS

Patricia Cotlow, Phillip Krass, Sharon LaComb, James Stein, and Theodore Suss, individually and on behalf of all Citizens of Minnesota similarly situated,

Intervening Plaintiffs,

vs.

Joan Growe, Secretary of State of the State of Minnesota; Mark Lundgren, Carver County Auditor, individually and on behalf of all County Auditors of the State of Minnesota,

Defendants,

and

The Seventy-seventh Minnesota State House of Representatives; and the Seventy-seventh Minnesota State Senate,

Defendant-Intervenors.

AND

Duane Benson, Terry Dempsey, Delores Hettig, Richard Harmon, David E. Peterson, E.M. Patricia Pidcock, and Frank Ringsmuth,

Court File No. 4-91-603

Plaintiffs,

vs.

Joan Growe, Secretary of State of the State of Minnesota,

Defendant.

Before CHIEF JUDGE LAY, Circuit Judge, MacLAUGHLIN, District Judge, and MAGNUSON, District Judge.

IT IS HEREBY ORDERED That Joseph Dixon, John Hoyt, and Gregory L. Wilmes are appointed as Special Masters in the above entitled actions pursuant to F.R. Civ. P. 53.

The appointment as Special Masters is effective commencing September 3, 1991. The Special Masters are authorized to assist the court in evaluating the reapportionment plan to be submitted by the parties in the redistricting of state legislative districts and congressional districts in the State of Minnesota. The Special

Masters shall perform whatever general and specific duties the three-judge court requests them to carry out in the court's duty to pass upon the constitutional plan of reapportionment.

The Special Masters are authorized to employ whatever technical and clerical assistance deemed necessary to the proper performance of their duties.

The compensation to the Special Masters and supporting personnel shall be fixed by the court and shall be taxed to the State of Minnesota at the appropriate time.

DATED: August 27, 1991.

BY THE COURT:

/s/
Donald P. Lay
U.S. Circuit Judge

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

James Emison, Judy Fairbanks, Marie Iverson, Ken Dean, Steve Castillo, Lew Freeman, and Yao Lo, individually and on behalf of all Citizens and Voters of the State of Minnesota similarly situated,

Plaintiffs,

and

Patricia Cotlow, Phillip Krass, Sharon LaComb, James Stein, and Theodore Suss, individually and on behalf of all Citizens of Minnesota similarly situated,

Intervening Plaintiffs,

vs.

Joan Growe, Secretary of State of the State of Minnesota; Mark Lundgren, Carver County Auditor, individually and on behalf of all County Auditors of the State of Minnesota,

Defendants,

and

Civil File No. 4-91-202

ORDER APPOINTING SPECIAL MASTERS

The Seventy-seventh Minnesota
State House of Representatives;
and the Seventy-seventh Minnesota
State Senate,

Defendant-Intervenors.

AND

Duane Benson, Terry Dempsey,
Delores Hettig, Richard Harmon,
David E. Peterson, E.M. Patricia
Pidcock, and Frank Ringsmuth,

Plaintiffs,

vs.

Joan Growe, Secretary of State
of the State of Minnesota,

Defendant.

Court File No. 4-91-603

Before CHIEF JUDGE LAY, Circuit Judge, MacLAUGHLIN, District Judge, and MAGNUSON, District Judge.

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The Special Masters are authorized to employ whatever technical and clerical assistance deemed necessary to the proper performance of their duties.

The compensation to the Special Masters and supporting personnel shall be fixed by the court and shall be taxed to the State of Minnesota at the appropriate time.

DATED: August 27, 1991.

BY THE COURT:

/s/
Donald P. Lay
U.S. Circuit Judge

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

IN RE

MASTER DOCKET
CIVIL 4-91-202

REAPPORTIONMENT LITIGATION

ORDER

James Emison, Judy Fairbanks, Marie Iverson, Ken Dean, Steve Castillo, Lew Freeman, and Yao Lo, individually and on behalf of all Citizens and Voters of the State of Minnesota similarly situated,

Plaintiffs,

and

Patricia Cotlow, Phillip Krass, Sharon LaComb, James Stein, and Theodore Suss, individually and on behalf of all Citizens of Minnesota similarly situated,

Intervening Plaintiffs,

v.

Joan Growe, Secretary of State of the State of Minnesota; Mark Lundgren, Carver County Auditor, individually and on behalf of all County Auditors

of the State of Minnesota,

Defendants,

and

The Seventy-seventh Minnesota State House of Representatives and the Seventy-seventh Minnesota State Senate,

Defendant Intervenors,

and

Patrick O'Connor, Hennepin County Auditor, individually and on behalf of all County Auditors of the State of Minnesota,

Defendant Intervenor.

AND

Duane Benson, Terry Dempsey, Delores Hettig, Richard Harmon, David E. Peterson, E.M. Patricia Pidcock, and Frank Rinsgmuth,

Plaintiffs,

v.

Joan Growe, Secretary of State of the State of Minnesota,

Defendant,

and

Patrick O'Connor, Hennepin
County Auditor, individually
and on behalf of all County
Auditors of the State of
Minnesota,

Defendant
Intervenor.

The Hennepin County Auditor, Patrick O'Connor, individually and on behalf of all county auditors of the State of Minnesota has moved this Court for leave to intervene as a defendant in the above-captioned consolidated cases.

After full consideration, the motion of the Hennepin County Auditor, Patrick O'Connor, individually and on behalf of all county auditors of the State of Minnesota is hereby granted.

/s/
Judge Harry H. MacLaughlin
United States District Court
For the Panel

DATED: October 2, 1991

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

IN RE: REAPPORTIONMENT LITIGATION
MASTER DOCKET CIVIL NO. 4-91-202
ORDER ESTABLISHING COURT SCHEDULE

James Emison, Judy Fairbanks,
Marie Iverson, Ken Dean, Steve
Castillo, Lew Freeman, and Yao
Lo, individually and on behalf
of all Citizens and Voters of
the State of Minnesota
similarly situated,

Plaintiffs,

and

Patricia Cotlow, Phillip Krass,
Sharon LaComb, James Stein, and
Theodore Suss, individually and
on behalf of all Citizens of
Minnesota similarly situated,

Intervening
Plaintiffs,

v.

Joan Growe, Secretary of State
of the State of Minnesota;
Mark Lundgren, Carver County
Auditor, individually and on
behalf of all County Auditors
of the State of Minnesota,

Defendants,

and

The Seventy-seventh Minnesota State House of Representatives; and the Seventy-seventh Minnesota State Senate,

Defendant Intervenors,

and

Patrick O'Connor, Hennepin County Auditor, individually and on behalf of all County Auditors of the State of Minnesota,

Defendant Intervenor.

AND

Duane Benson, Terry Dempsey, Delores Hettig, Richard Harmon, David E. Peterson, E.M. Patricia Pidcock, and Frank Ringsmuth,

Plaintiffs,

v.

Joan Growe, Secretary of State of the State of Minnesota,

Defendant,

and

Patrick O'Connor, Hennepin County Auditor, individually and on behalf of all County Auditors of the State of Minnesota,

Defendant Intervenor.

Before CHIEF JUDGE LAY, Circuit Judge, MacLAUGHLIN, District Judge, and MAGNUSON, District Judge.

The parties in the above titled case have submitted suggested criteria for reapportionment and the court having reviewed the submissions, IT IS HEREBY ORDERED THAT:

1. The parties shall confer and prepare stipulations as to population figures and base maps to be used for purposes of reapportionment.

2. The parties shall submit these stipulations to the court no later than October 10, 1991.

3. The three-judge court will hold a hearing on October 11, 1991, at 9:00 a.m. in Court Room #1 on the fifth floor of the Federal Court Building, 316 N. Robert Street, St. Paul, Minnesota, for the purpose of hearing arguments on the proposed criteria for reapportionment.

Any parties wishing to respond to criteria previously submitted to the court must do so by October 10, 1991. Depending on the stipulations submitted by the parties, the court may entertain discussion at this hearing on matters to which the parties have not been able to stipulate.

4. The court hereby adopts the schedule set forth below:

a. The court intends to issue its opinion on the criteria to be utilized for reapportionment no later than October 22, 1991.

b. The parties shall submit to the court, if they choose, their suggested legislative and congressional plans for reapportionment no later than October 31, 1991.

c. The parties shall file with the court objections to any plans of reapportionment previously submitted no later than November 12, 1991.

d. The submission of said plans shall be fully reviewed by the court, with the understanding that no court plan will be adopted, if the State of Minnesota shall enact a valid constitutional plan on or before January 25, 1992 for redistricting both the state legislature and congressional districts.

The court adopts a time schedule primarily as a means of encouraging the legislature to reapportion the state, as it is obligated to do under Article IV, Section 3 of the Minnesota State Constitution.

IT IS SO ORDERED.
Dated this 4th day of October, 1991.

/s/
DONALD P. LAY
United States Circuit Judge
Sitting by Special Designation

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

CIVIL #4-91-202

James Emison, Judy Fairbanks, Marie Iverson, Ken Dean, Steve Castillo, Lew Freeman, and Yao Lo, individually and on behalf of all Citizens and Voters of the State of Minnesota similarly situated,

Plaintiffs,

and

ORDER

Patricia Cotlow, Phillip Krass, Sharon LaComb, James Stein, and Theodore Suss, individually and on behalf of all Citizens of Minnesota similarly situated,

Intervening Plaintiffs,

v.

Joan Growe, Secretary of State of the State of Minnesota; Mark Lundgren, Carver County Auditor, individually and on behalf of all County Auditors

of the State of Minnesota,

Defendants,

and

The Seventy-seventh Minnesota State House of Representatives; and the Seventy-seventh Minnesota State Senate,

Defendant Intervenors,

and

Patrick O'Connor, Hennepin County Auditor, individually and on behalf of all County Auditors of the State of Minnesota,

Defendant Intervenor.

AND

Duane Benson, Terry Dempsey, Delores Hettig, Richard Harmon, David E. Peterson, E.M. Patricia Pidcock, and Frank Ringsmuth,

Plaintiffs,

v.

Joan Growe, Secretary of State of the State of Minnesota,

Defendant,

and

Patrick O'Connor, Hennepin County Auditor, individually and on behalf of all County Auditors of the State of Minnesota,

Defendant Intervenor.

Before CHIEF JUDGE LAY, Circuit Judge, MacLAUGHLIN, District Judge, and MAGNUSON, District Judge.

IT IS ORDERED That plans for apportioning the Minnesota legislative districts shall be consistent with the following criteria:

1. There shall be sixty-seven (67) Senate districts and one hundred thirty-four (134) House districts.

2. Each district may elect a single member.

3. No House district shall be divided in the formation of a Senate district.

4. The population of the districts will be as nearly equal as possible. Minor deviations in population equality not to exceed plus or minus two percent (2%) will be permitted when necessary to facilitate recognition of other criteria.

5. The districts shall preserve the voting strength of minority populations and will, wherever possible, increase the

probability of such minority representation from areas of sizable concentrations of minority population.

6. The districts shall be compact and consist of convenient contiguous territory. Where contiguity of a district is interrupted by water, this criterion is satisfied if the water does not seriously impede travel within the district.

7. The districts shall be numbered in a regular series. House district 1A shall begin in the northwest corner of the state, with each subsequent district proceeding in order across the state from west to east and north to south until ending in the southeast corner of the state, bypassing in the process the seven-county metropolitan area. The same process then continues for the seven-county metropolitan area outside the cities of Minneapolis and St. Paul, and ends with the cities of Minneapolis and St. Paul.

8. The integrity of existing political subdivision boundaries of the State, e.g., counties, cities, or townships, shall be respected to the extent practicable to minimize division in the formation of a district.

9. An apportionment plan may recognize the preservation of communities of interest in the formation of districts while adhering to the established criteria. To the extent any consideration is given to a community of interest, the data or information upon which the consideration is based shall be identified.

10. Previous electorate voting behavior or residency of incumbents shall not be used in the development of any apportionment plan. This information may be used by the court, however, to evaluate the fairness and equity of plans submitted.

IT IS FURTHER ORDERED That plans for apportioning the Minnesota congressional districts shall be consistent with the following criteria:

1. There shall be eight (8) districts.

2. Each district may elect a single member.

3. The population of the districts will be as nearly equal as possible. The maximum permissible deviation from population equality will be plus or minus one-quarter of one percent (.25%).

4. The districts shall preserve the voting strength of minority populations and will, wherever possible, increase the probability of such minority representation from areas of sizable concentrations of minority population.

5. The districts shall be compact and consist of convenient contiguous territory. Where contiguity of a district is interrupted by water, this criterion is satisfied if the water does not seriously impede travel within the district.

6. The districts shall be numbered in a regular series. Congressional district one shall begin in the southeast corner of the state, and congressional district eight shall end in the northeast corner of the state.

7. The integrity of existing political subdivision boundaries of the State, e.g., counties, cities, or townships, shall be respected to the extent practicable to minimize division in the formation of a district.

8. An apportionment plan may recognize the preservation of communities of interest in the formation of districts while adhering to the established criteria. To the extent any consideration is given to a community of interest, the data or information upon which the consideration is based shall be identified.

9. Previous electorate voting behavior or residency of incumbents shall not be used in the development of any apportionment plan. This information may be used by the court, however, to evaluate the fairness and equity of plans submitted.

IT IS SO ORDERED.

DATED: October 21, 1991.

/s/
Donald P. Lay, U.S. Court of Appeals for the 8th Circuit

/s/
Harry H. MacLaughlin, U.S. District Court

/s/
Paul Magnuson, U.S. District Court

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

CIVIL #4-91-202

James Emison, Judy Fairbanks, Marie Iverson, Ken Dean, Steve Castillo, Lew Freeman, and Yao Lo, individually and on behalf of all Citizens and Voters of the State of Minnesota similarly situated,

Plaintiffs,

and

Patricia Cotlow, Phillip Krass, Sharon LaComb, James Stein, and Theodore Suss, individually and on behalf of all Citizens of Minnesota similarly situated,

Intervening Plaintiffs,

v.

Joan Growe, Secretary of State of the State of Minnesota; Mark Lundgren, Carver County Auditor, individually and on behalf of all County Auditors

ORDER FOR HEARING ON MOTION FOR SUMMARY JUDGMENT

of the State of Minnesota,

Defendants,

and

The Seventy-seventh Minnesota State House of Representatives; and the Seventy-seventh Minnesota State Senate,

Defendant Intervenors,

and

Patrick O'Connor, Hennepin County Auditor, individually and on behalf of all County Auditors of the State of Minnesota,

Defendant Intervenor.

AND

Duane Benson, Terry Dempsey, Delores Hettig, Richard Harmon, David E. Peterson, E.M. Patricia Pidcock, and Frank Ringsmuth,

Plaintiffs,

v.

Joan Growe, Secretary of State of the State of Minnesota,

Defendant,

and

Patrick O'Connor, Hennepin County Auditor, individually and on behalf of all County Auditors of the State of Minnesota,

Defendant Intervenor.

Before CHIEF JUDGE LAY, Circuit Judge, MacLAUGHLIN, District Judge, and MAGNUSON, District Judge.

Please take notice that the court shall call up for hearing a motion for summary judgment of the plaintiffs, Duane Benson, et al., for hearing on December 4, 1991, at 2:00 p.m., in courtroom number 1, on the fifth floor of the Federal Court Building, 316 North Robert Street, St. Paul, Minnesota. All parties under master docket civil number 4-91-202 in litigation entitled Emison, et al. v. Growe, et al., including the intervening plaintiffs and intervening defendants, shall be notified and shall have an opportunity to be heard on the motion for summary judgment.

IT IS SO ORDERED.

Dated this 27th day of November, 1991.

/s/
DONALD P. LAY
United States Circuit Judge
Sitting by Special Designation

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

CIVIL #4-91-202

James Emison, Judy Fairbanks, Marie Iverson, Ken Dean, Steve Castillo, Lew Freeman, and Yao Lo, individually and on behalf of all Citizens and Voters of the State of Minnesota similarly situated,

Plaintiffs,

and

Patricia Cotlow, Phillip Krass, Sharon LaComb, James Stein, and Theodore Suss, individually and on behalf of all Citizens of Minnesota similarly situated,

Intervening Plaintiffs,

v.

Joan Growe, Secretary of State of the State of Minnesota; Mark Lundgren, Carver County Auditor, individually and on behalf of all County Auditors

ORDER OF STAY OF ALL PROCEEDINGS PENDING BEFORE THE MINNESOTA SPECIAL REDISTRICTING PANEL IN COTLOW V. GROWE NO. C8-91-985

of the State of Minnesota,

Defendants,

and

The Seventy-seventh Minnesota State House of Representatives; and the Seventy-seventh Minnesota State Senate,

Defendant Intervenors,

and

Patrick O'Connor, Hennepin County Auditor, individually and on behalf of all County Auditors of the State of Minnesota,

Defendant Intervenor.

AND

Duane Benson, Terry Dempsey, Delores Hettig, Richard Harmon, David E. Peterson, E.M. Patricia Pidcock, and Frank Ringsmuth,

Plaintiffs,

v.

Joan Growe, Secretary of State of the State of Minnesota,

Defendant,
and

Patrick O'Connor, Hennepin County
Auditor, individually and on
behalf of all County Auditors
of the State of Minnesota,

Defendant
Intervenor.

Before CHIEF JUDGE LAY, Circuit Judge, MacLAUGHLIN, District Judge, and MAGNUSON, District Judge.

BY DONALD P. LAY, United States Circuit Judge, and PAUL A. MAGNUSON, United States District Judge.

In January a Minnesota state district court suit was commenced challenging the Constitutionality of the legislative apportionment act, Minn. Stat. §§ 2.019, 2.042-2.702 (1990), and the Congressional apportionment plan set forth in LaComb v. Grove, 541 F.Supp. 145. (D. Minn. 1982)[1] A similar action was brought in the federal district court on March 18, 1991, challenging both the state and

[1] Cotlow v. Growe, No. C8-91-985 (Minn. Special Redistricting Panel filed January, 1991). The state district court proceeding was assigned to a three-judge court under the general constitutional authority of the Chief Justice to move and transfer judges from one district to another. See Minn. Stat. § 2.724, subd.1 (1992). No Minnesota law requires the approval of a legislative reapportionment plan by a three-judge court as does the federal statute under 28 U.S.C. § 2284 (1988).

congressional apportionment laws.[2] However, on May 18, 1991, the Minnesota legislature passed Chapter 246, S.F. No. 1571, establishing a legislative redistricting plan. Although the Governor attempted to veto this bill, a state district court ruled on August 2, 1991, that Chapter 246 was validly enacted because the Governor had not timely exercised his veto power.[3] No appeal was taken from this decision. A separate suit was thereafter commenced in federal district court on August 9, 1991, by a group of Minnesota voters to declare Chapter 246 unconstitutional.[4] All federal actions were subsequently consolidated.

Oral representations were made in this court by the Minnesota State Attorney General and the majority legislative party that Chapter 246 was unconstitutional, and that the state legislature planned to take further action in January, 1992, to remove the constitutional deficiencies of Chapter 246 by amendment and to enact a valid congressional redistricting plan. These same parties then requested this court not only to defer further proceedings until the legislature acted but also to abstain from further judicial action because of the ongoing state court proceedings.

In our order of August 21, 1991, this court found that under current principles relating to federal abstention, and under the unique circumstances present in this case, we could not abstain simply because there existed ongoing state court Proceedings. At that time we pointed out that the plaintiff class in the original federal suit included minority members alleging federal voting

[2] Emison v. Growe, No. 4-91-202 (D. Minn. filed March 18, 1991).

[3] The Seventy-seventh Minn. State Senate v. Carlson, No. C3-91-7547 (Ramsey County Dist. Ct. August 2, 1991).

[4] Benson v. Growe, No. 4-91-603 (D. Minn. filed August 9, 1991).

right violations under Section 2 of the Voting Rights Act of 1965. We also noted the time-consuming nature of the full state court process for review of the legislative plan anticipated in January of 1992, and that an ultimate state court appeal could not be procured to constitutionally define the districts in time for the election process to take place in Minnesota. Under such circumstances, we deemed abstention improper. Other reasons were also clear. There was no allegation of ambiguity in state law requiring state clarification. Furthermore, at the time the federal lawsuit was initiated in Benson v. Growe, no constitutional attack had been made on Chapter 246 in the state court.[5] The only state court suit then pending was the constitutional challenge to the 1982 law.

Notwithstanding our order declining to abstain due to the state court proceedings, we refused to go forward with a judicially created redistricting plan because of the state's assurances to the court that the appropriate committees would be meeting in the fall of 1991 and the legislature would pass a constitutional plan no later than January 17, 1992. It was agreed that the legislature's plan would be submitted to this court for review no later than January 20, 1992. Emison v. Growe, No. 4-91-202, at 10-11 (D. Minn. August 21, 1991) (Memorandum and Order).

In our August 21 order, we observed:

> Notwithstanding our concerns that deference to the state courts would provide difficult time constraints to make certain that a valid plan is implemented by March, 1992, we do recognize that the judiciary whether it be the state court or the federal court, should not substitute its judgment for legislative action in redistricting within a state for purposes of the House or Senate or for purposes of drawing lines for valid congressional districts.

Id. at 8 (emphasis added). We also emphasized the Supreme Court's directive in Reynolds v. Sims, 377 U.S. 533 (1964), that state legislatures have primary jurisdiction over legislative apportionment:

> [R]eapportionment is primarily a matter for legislative consideration and determination, and that judicial relief becomes appropriate only when a legislature fails to reapportion according to federal constitutional requisites in a timely fashion after having had an adequate opportunity to do so.

Reynolds, 377 U.S. at 586 (emphasis added).

We continue to adhere to our order of August 21, 1991, and our subsequent scheduling order of October 5, 1991. We write at this time only because the state court has now deemed it appropriate to reveal, in a preliminary Order dated November 21, 1991, its own plan for redistricting the state legislature. It has done this in advance of any legislative action, and has announced that the court plan will be adopted to allow "an orderly appeal process." Cotlow v. Growe, No. C8-91-985, at 16 (Minn. Special Redistricting Panel, Nov. 21, 1991) (Preliminary Order for Judgment on Legislative Redistricting). The state court acknowledges that its plan will not be fully implemented if the legislature does pass a reapportionment plan in January, 1992. Id. However, according to the state panel's order, "we are attempting to have final reapportionment in place in advance of the February precinct caucuses and to provide some certainty to local units of government who are anxious to begin their own redistricting process." Id. (emphasis added). The state

[5] Chapter 246 was not deemed a validly enacted state law until August 2, 1991. However, in Cotlow v. Growe, No. C8-91-985, at 3 (Minn. Special Redistricting Panel, Oct. 1, 1991), the state court found Chapter 246 to be unconstitutional.

panel also adds that "[b]y proceeding as swiftly as possible, we intend to provide any time necessary for an orderly appeal Process and to avoid any duplicative litigation in the federal courts."Id. (emphasis added). Thus, we deem it clear that the state court intends to make its order final before the state legislature acts in January, 1992.[6]

The state court reads Scott v. Germano, 381 U.S. 407 (1965) as establishing "that state courts have a primary obligation to review redistricting issues.[7] Cotlow v. Growe, No. C8-91-985, at

[6] At a state court hearing on December 3, 1991, the three-judge panel orally announced it would issue its final order adopting a legislative redistricting plan within the week. The state court also indicated it would adopt a Congressional redistricting plan by the end of December, 1991.

[7] Germano did encourage state courts to act in reapportionment cases where review could take place in ample time before an election. However, as we discussed in our earlier order:

> [W]e find Germano distinguishable from the present case on two grounds. First, in Germano the action had been commenced in state court in April, 1964, almost two years prior to the time of the election. Upon appeal, the Supreme Court of Illinois held the composition of: the Illinois senate invalid on February 4, 1965, but expressed confidence that the General Assembly would perform its duty to enact a constitutionally valid plan during its then current session, which expired on July 1, 1965. It is important to note that the Supreme Court of Illinois retained jurisdiction of the case so that it could take such affirmative action as necessary to ensure that a valid plan would be in place for the 1966 election. Thus, one of the distinguishing features of Germano is that the highest court of the state retained jurisdiction so that it would have time to approve a constitutionally valid plan in the event the Illinois General Assembly failed to act.
>
> In addition, it is clear from the Illinois Supreme Court's holding that the General Assembly would have to enact a reapportionment plan by July 1, 1965, which again was more than a year before the 1966 election. In the present situation, the state case is now just beginning in the state district court. A recent scheduling order has been adopted by the state court with an announcement that it will issue a final redistricting plan on December 20, 1991. We recognize that an appeal from such a court ordered plan would lie to either the Minnesota Court of Appeals or to the Minnesota Supreme

16 (Minn. Special Redistricting Panel, November 21, 1991) (Preliminary Order for Judgment on Legislative Redistricting). Nothing in Germano recognizes the state court's "primary obligation" to review reapportionment plans. Rather, it makes clear that the primary responsibility for establishing apportionment plans lies with the legislative process. See Germano, 381 U.S. at 409. Thus, we find the issuance of a state court plan before the legislature has acted to be in direct violation of Scott v. Germano and existing federal law. We further believe that the premature issuance of this plan represents an attempt to improperly influence the state legislative process,[8] and encourages appeals on a hypothetical

> Court and that the time necessary for such appellate review would certainly move the case into the early or middle part of 1992. More significantly, the process in the state courts fails to anticipate that final legislative action on both the state and congressional districts will not be completed by the state legislature until January, 1992.

Emison v. Growe, No. 4-91-202 , at 6 (D. Minn., August 21, 1991) (Memorandum and Order).

[8] See Duxbury v. Donovan, 272 Minn. 424, 432-33, 138 N.W.2d 692, 698 (1965) (discussing Smiley v. Holm, 285 U.S. 355 (1932)):

> Our court read U.S. Const. art. I, § 4, as delegating a Federal responsibility to an entity, i.e., the legislature which consists of the House of Representatives and the Senate. The United States Supreme Court, final arbiter of the meaning of the Federal Constitution, construed art. I, § 4, as assigning the task of redistricting for the purpose of Federal elections not to an entity but to a process, that is, the process by which statutory law is made in the particular state exercising the delegated authority. It is this point of divergence in thinking as between the Minnesota Supreme Court and the United States Supreme Court which accounts for the difference in result. It is correct that the entity described by the words "the legislature" in the State of Minnesota consists of the House of Representatives and the Senate and does not include the governor. The Process which is involved in the enactment of statutory law involves exercise of power delegated to the legislature as an entity either by a majority vote of each house

court plan which may never be implemented if the legislature acts as contemplated in January, 1992.

When this court considered the defendant's motion requesting our abstention in this matter, we were concerned about the ability of the state agencies, including the Supreme Court of Minnesota, to timely approve a legislative plan or to adopt one of their own. In weighing the issue of timeliness, we were aware of the Supreme Court's direction in Scott v. Germano, 381 U.S. at 409, that while the district court should defer to the state agencies, it should nevertheless "enter an order fixing a reasonable time within which the appropriate agencies of the State of Illinois, including its Supreme Court, may validly redistrict the Illinois State Senate; provided that the same be accomplished within ample time to permit such plan to be utilized in the 1966 election . . . ." The Supreme Court instructed the federal district court to "retain jurisdiction of the case and in the event a valid reapportionment plan for the State Senate is not timely adopted it may enter such orders as it deems appropriate, including an order for a valid reapportionment plan for the State Senate . . . ." Id. In view of this direction, we reasoned in our August 21, 1991, order that it would be inappropriate to set a date by which the state agencies should act because the legislative process will not be completed until January 20, 1992. All parties agreed that a redistricting plan should be implemented in early February and in any event no later than March 1, 1992. On that basis, we unanimously agreed that it would be improper for us to abstain by reason of the pending state court proceeding. In view of the alleged voting rights allegations

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or by a two-thirds majority of each house depending on whether the governor approves or disapproves of the legislation enacted.

contained in the federal pleadings and not involved in the state pleadings, the concession that Chapter 246 is unconstitutional, and the unique time constraints involved, this court indicated it would be prepared to immediately adopt a valid court plan in the event that the legislative process fails to implement a plan by January 20, 1992.

The state court's action of November 21, 1991, apparently was intended to obviate delay in implementing the state court's plan in the event that the legislature does not pass a duly constitutional plan. This action by the state court was no doubt in response to the concern we expressed in our August order that the state processes would take too long. The problem with this premature action, however, is that any final judgment of the state court can only be advisory because it is contingent upon the failure of the state legislative process to implement a plan in late January, 1992. As such, the state court order lacks ripeness for its proposed appellate review. The order directly interferes with this court's orders of August 21, 1991, and October 5, 1991, requiring utmost deference to the state legislative process under fundamental principles of the United States Constitution as applied through the decisions of the Supreme Court of the United States. See Reynolds v. Sims, 377 U.S. 533, 586 (1964). In light of this court's orders deferring review until the legislative process has run its course in late January of 1992, and its retention of jurisdiction on issues of federal law, the adoption of a plan at this time by the state court does not provide "certainty" that a plan will be "in place" but rather serves to create confusion and concern over its premature finality.

We view the action of the state panel as being in direct violation of federal law and interfering with the continuing jurisdiction of this court. On this basis, with great reluctance,

deference, and concern, we now issue an order necessary in aid Of our jurisdiction enjoining further issuance of the state court plan and staying the effective date thereof until further order of this court.

We are fully cognizant of the heavy responsibility we face in our decision to issue this order. We have determined that the State of Minnesota, its people, the legislature, and the Governor, must be protected from confusing and possible conflicting orders of a state and federal court. We deem it highly improvident that the state court has proposed a plan of its own before the legislature has had a full and complete opportunity to act. Such a plan, if allowed to stand, clearly contains an intimidating message to the legislature and the Governor. There can be no disagreement that the legislative process should be allowed to proceed, unrestricted and free from judicial influence. The integrity of the legislative process must be protected. A court adopted plan issued before the legislature acts inhibits the legislative process.

If, as in Germano, a legislative plan or a state judicial plan could be timely reviewed by the State Supreme Court and be in place in early February, we would have gladly stayed our hand and deferred to the state agencies implementing such a plan. But it was clear in August, and it is clear today that no such legislative plan can be timely reviewed by the state judicial system to be in place by early February. Therefore, to allow the state courts to act before the legislature convenes places our review procedure in jeopardy and casts uncertainty on the validity of any plan. For these reasons we deem our action necessary. We make clear in issuing this order that we do not approve or disapprove of any plan.

In exercising ancillary jurisdiction to issue a writ "necessary or appropriate in aid of" that jurisdiction, it is not necessary that a

final judgment be reached by a federal district court to preserve its jurisdiction or authority over "an ongoing matter [in order to] justify an injunction against actions in the state court." In re Baldwin-United Corp., 770 F.2d 328, 335 (2nd Cir. 1985). The Supreme Court has observed that a federal court may issue an injunctive order under the All-Writs Act "to prevent a state court from so interfering with a federal court's consideration or disposition of a case as to seriously impair the federal court's flexibility and authority to decide that case." Atlantic Coast Line R.R. v. Brotherhood of Locomotive Engrs. 398 U.S. 281, 295 (1970).

Principles of federalism require issuance of this unusual order to protect the exercise of this court's jurisdiction and previous orders requiring deference to the state legislative process and postponing review until the results of such process may be considered in late January, 1992. Assuming the Minnesota courts would allow the state court's advisory order approving a court plan to become final, several issues could arise affecting this court's jurisdiction. If a legislative plan is enacted in January, 1992, but on review by this court is held to be constitutionally invalid, there would exist uncertainty as to the legal effect of the state court plan. The same jurisdictional concerns would exist in the event the legislature fails to enact a plan. If on appeal to the Minnesota Supreme Court, the proposed advisory state court plan is approved before the legislature acted in January, 1992, questions regarding the finality of that judgment would arise under 28 U.S.C. § 1738. Issues would then arise as to whether this court could exercise its jurisdiction to approve an alternative plan, amend the legislative plan, or approve a separate court plan. With the necessity of having a final constitutional plan in place in early February, 1992, additional litigation over jurisdiction regarding which plan should be adopted would simply add to the confusion and uncertainty of

the competing judgments. If no legislative plan is forthcoming, in view of the federal concerns, this court will in timely fashion assume its responsibility to protect under the Constitution of the United States the rights and interests of all parties concerned. The issues before us are not state law questions; they are federal questions involving federal law.

Our action today does not in any way disagree with the principle of encouraging state courts to assume jurisdiction in redistricting cases where there exists ample time for the state judicial machinery to review a legislative plan. We abhor the duplicity of action that has been undertaken in the last several months. Ordinarily this court would defer to an ongoing state court proceeding. Ordinarily comity and deference to state courts would require us to do so. This especially would be true if no voting rights violations were alleged in the federal court, or if there existed ambiguities in state law. When time constraints are involved as here, however, and the federal court determines that state judicial processes will involve undue delay, federal courts are instructed to retain jurisdiction and to act accordingly. See Scott v. Germano, 381 U.S. 407 (1965). Federal abstention is especially inappropriate when the challenge is made at the eleventh hour. We retain jurisdiction of the subject matter and request the parties to appear on January 27, 1992, at 9:00 a.m. for further consideration of all issues before this court.

IT IS THEREFORE ORDERED

Pursuant to the All-Writs Act, 28 U.S.C. § 1651 and as authorized by the second enumerated exception to 28 U.S.C. § 2283, necessary in aid of this court's jurisdiction, we hereby enjoin all proceedings in Cotlow v. Growe, No. C8-9-985, pending before the State of Minnesota Special Redistricting Panel. In this

regard, all previous orders of the above Special Redistricting Panel and any future orders that panel may issue relating to the adoption of any state redistricting plan or Congressional redistricting plan are hereby stayed until further order of this court. All of the parties involved in the state Proceedings are either parties or intervenors in the consolidated cases pending before this court. Each of the parties and their council in the federal proceeding are hereby enjoined from attempting to enforce or implement any order of the above Minnesota Special Redistricting Panel which has proposed adoption of a reapportionment plan relating to state redistricting or Congressional redistricting until further order of this court. The parties so enjoined are as follows:

James Emison, Judy Fairbanks, Marie Iverson, Ken Dean, Steve Castillo, Lew Freeman, and Yao Lo, individually and on behalf of all Citizens and Voters of the State of Minnesota similarly situated,

Plaintiffs,

and

Patricia Cotlow, Phillip Krass, Sharon LaComb, James Stein, and Theodore Suss, individually and on behalf of all Citizens of Minnesota similarly situated,

Intervening Plaintiffs,

and

Joan Growe, Secretary of State of the State of Minnesota; Mark Lundgren, Carver County Auditor, individually and on behalf of all County Auditors

of the State of Minnesota,

Defendants,

and

The Seventy-seventh Minnesota State House of Representatives; and the Seventy-seventh Minnesota State Senate,

Defendant Intervenors,

and

Patrick O'Connor, Hennepin County Auditor, individually and on behalf of all County Auditors of the State of Minnesota,

Defendant Intervenor.

Duane Benson, Terry Dempsey, Delores Hettig, Richard Harmon, David E. Peterson, E.M. Patricia Pidcock, and Frank Ringsmuth,

Plaintiffs.

Each party, through their respective counsel, shall be given notice forthwith of this court's order. A copy of this court's order shall be served on the Minnesota Special Redistricting Panel by serving the Clerk of the Appellate Courts, Minnesota Judicial Center. Notice of this order shall also be served upon the Governor of the State of Minnesota, Arnold Carlson, and Hubert Humphrey III, Attorney General of the State of Minnesota.

LET JUDGMENT BE ENTERED ACCORDINGLY.

MacLaughlin, J., dissenting.

I do not agree that the state court should be enjoined from proceeding with its plan of reapportionment. I see no reason why that court is not fully able to consider and decide the reapportionment issues presented to it.

In addition, the November 21, 1991 order issued by the state court seems completely appropriate both as to the law and as to the reapportionment plan it proposes.[1] Clearly Chapter 246 represents state policy which, in my judgment, must be the cornerstone of any new reapportionment plan. The amendments made to Chapter 246 by the state court, subject to comment by the parties and review by that court after its proposed hearing on December 3, 1991, are an attempt by the state court to follow the state policy provided in Chapter 246.[2]

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[1] In a letter to the state court panel dated October 15, 1991, Mr. William J. Davis, Chair of the Political Action Committee for Minneapolis and the Minnesota/Dakotas State Conference of the National Association for the Advancement of Colored People states:

> NAACP representatives from every branch in Minnesota were in attendance [at the NAACP Annual Statewide meeting]. After a thorough review the group voted unanimously to endorse the Legislature's Plan [the plan of the defendant intervenor herein].
>
> It is our belief and feeling that this plan provides the greatest opportunity for "People of Color" to be elected during the upcoming decade. Furthermore, we realize that we will be "locked out or locked in" for the balance of the century. We urge the court to adopt the legislative redistricting plan proposed by the Legislature.

This opinion of the NAACP regarding the defendant intervenor's plan seems to me to be significant and compelling.

[2] Perhaps it would have been wiser for the state court to delay the adoption of any final plan until the state has acted, that is no later than January 17, 1992, as represented to us by the Legislature. In my judgment, assuming speedy action by the Minnesota Supreme Court which I believe would be forthcoming, sufficient

Further, and overriding any other considerations, it seems clear to me that this Court has no legal authority to issue the injunction. The Anti-Injunction Act provides that

> A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments. 28 U.S.C. § 2283.

The Act establishes a general prohibition against federal interference with state court jurisdiction, allowing a federal court to enjoin a state court only if one of the three statutory exceptions applies. Because the statutory prohibition against federal injunctions of state court proceedings "rests on the fundamental constitutional independence of the States and their courts, the exceptions should not be enlarged by loose statutory construction." Atlantic Coast Line Railroad Co. v. Brotherhood of Locomotive Engineers, 398 U.S. 281, 287 (1970).

Thus, the United States Supreme Court has held that "[p]roceedings in state courts should normally be allowed to continue unimpaired by intervention of the lower federal courts, with relief from error, if any, through the state appellate court and ultimately this Court." Id. Any doubts regarding the propriety of a federal injunction must be resolved in favor of permitting the state courts to resolve the issues before them. Id. at 297. The majority believes that its injunction is necessary to protect this court's jurisdiction and its orders of August 21 and October 5, and that the injunction therefore falls within the exceptions to the Anti-

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time would still have been available for an appropriate appeal of the state court's plan.

Injunction Act. I cannot agree, however, that the injunction is permissible under the Act.

An injunction is "necessary in aid of jurisdiction" if it is required to prevent a state court from seriously impairing the federal court's authority to decide a case before it. Where a state court and a federal court have concurrent jurisdiction, neither court is free to prevent parties from simultaneously pursuing claims in both courts, and a state court's assumption of jurisdiction does not hinder the federal court's jurisdiction so as to make an injunction necessary to aid that jurisdiction. Id. at 295-96. Both this court and the state court have jurisdiction over the redistricting claims; both courts are thus free to consider and decide the issue, and the state court order in no way interferes with this court's authority to review the constitutionality of the legislature's redistricting plan in accordance with its previous orders.

Nor is injunctive relief warranted to effectuate this Court's August 21st and October 5th orders. The exception allowing a federal court to enjoin a state court when necessary to "protect or effectuate its judgments" was intended to prevent state court relitigation of issues that had already been ruled upon in federal court. Chick Kam Choo v. Exxon Corp., 108 S.Ct. 1684, 1690 (1988). Thus, "an essential prerequisite for applying the relitigation exception is that the claims or issues which the federal injunction insulates from litigation in state proceedings actually have been decided by the federal court." Id. This court has yet to decide the redistricting issues before it, and therefore lacks authority under the Anti-Injunction Act to preclude the state court from ruling on those issues. The Anti-Injunction Act narrowly circumscribes the circumstances in which federal courts may

interfere with state court proceedings.[3] In my opinion, this case does not fall within the strictures of the Act.

This injunction is issued without any advance notice to any of the parties or to the state court, without any hearing, and without the benefit of briefs or oral argument. Further, I believe there is no legal justification for the injunction. Therefore, I respectfully dissent.

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[3] While not directly applicable here (because the state court has not interfered with federal rights or preempted federal law), the Supreme Court has issued this warning, "... a federal court does not have inherent power to ignore the limitations of § 2283 and to enjoin state court proceedings merely because those proceedings interfere with a protected federal right or invade an area preempted by federal law, even when the interference is unmistakably clear." Atlantic Coast Line Railroad, 398 U.S. at 294.

UNITED STATES DISTRICT COURT

DISTRICT OF MINNESOTA

James Emison, et al. **JUDGMENT IN A CIVIL CASE**

v.

Joan Growe, Secretary of State of the State of Minnesota, et al. Civil File No. 4-91-202

X **Decision by Court.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED THAT:

Judgment be entered enjoining proceedings in Cotlow v. Growe, No. C8-91-985, pending before the State of Minnesota Special Redistricting Panel, and any future orders that panel may issue relating to the adoption of any state redistricting plan or congressional redistricting plan are hereby stayed until further order of this court. Each of the parties and their counsel in the federal proceeding are hereby enjoined from attempting to enforce or implement any order of the above Minnesota Special Redistricting Panel which has proposed adoption of a reapportionment plan relating to state redistricting or congressional redistricting until further order of this court.

December 5, 1991 — Francis E. Dosel

Date — Clerk

/S/

(By) Deputy Clerk (Shirley J. Hanson)

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

CIVIL #4-91-202

James Emison, Judy Fairbanks, Marie Iverson, Ken Dean, Steve Castillo, Lew Freeman, and Yao Lo, individually and on behalf of all Citizens and Voters of the State of Minnesota similarly situated,

Plaintiffs,

and

Patricia Cotlow, Phillip Krass, Sharon LaComb, James Stein, and Theodore Suss, individually and on behalf of all Citizens of Minnesota similarly situated,

Intervening Plaintiffs,

v.

Joan Growe, Secretary of State of the State of Minnesota; Mark Lundgren, Carver County Auditor, individually and on behalf of all County Auditors

ORDER

of the State of Minnesota,

Defendants,

and

The Seventy-seventh Minnesota
State House of Representatives;
and the Seventy-seventh
Minnesota State Senate,

Defendant
Intervenors,

and

Patrick O'Connor, Hennepin County
Auditor, individually and on behalf
of all County Auditors of the State
of Minnesota,

Defendant
Intervenor.

AND

Duane Benson, Terry Dempsey,
Delores Hettig, Richard Harmon,
David E. Peterson, E.M. Patricia
Pidcock, and Frank Ringsmuth,

Plaintiffs,

v.

Joan Growe, Secretary of State
of the State of Minnesota,

Defendant,

and

Patrick O'Connor, Hennepin County
Auditor, individually and on
behalf of all County Auditors
of the State of Minnesota,

Defendant
Intervenor.

Before CHIEF JUDGE LAY, Circuit Judge, MacLAUGHLIN, District Judge, and MAGNUSON, District Judge.

The scheduled hearing set for January 27, 1992, at which time the parties are to report on the final efforts of the legislative plan dealing with the state redistricting and congressional redistricting is hereby vacated; the hearing shall be held at 9:30 a.m. on February 4, 1992, on the fifth floor of the Federal Building, 316 North Robert Street, St. Paul, Minnesota, in courtroom number one.

Each of the parties is asked to respond to the following inquiry: In what specifics do you find: (a) the state redistricting plan, and (b) the congressional redistricting plan as proposed by the opposing party, to be unfair, including any alleged "gerrymandering" which you find to be inherent within each of the proposed plans.

Each party is to submit its response to the court's inquiry by January 10, 1992. Each party may file a reply to such response on or before January 17, 1992.

It is so ordered.

Dated: January 3, 1992.

By the Court:

/s/
Donald P. Lay

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D.C. 20543

January 10, 1992

Mr. Alan Weinblatt
1616 Pioneer Building
536 North Robert Street
St. Paul, MN 55101

Re: Patricia Cotlow, et al.
v. James Emison, et al.
No. 91-1084

Dear Mr. Weiblatt:

The Court today entered the following order in the above entitled case.

The motion of appellants to expedite consideration of the jurisdiction statement is granted. The order entered December 5, 1991, of the United States District Court for the District of Minnesota staying state court proceedings is vacated.

Very truly yours,
/s/
William K. Suter, Clerk

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543

William K. Suter
Clerk of the Court

Area Code 202
479-3011

January 27, 1992

Mr. Alan Weinblatt
1616 Pioneer Building
336 North Robert Street
St. Paul, MN 55101

RE: Patricia Cotlow, et al. v. James Emison, et al. No. 91-1084

Dear Mr. Weinblatt:

The Court today entered the following order in the above-entitled case:

"The order of January 10, 1992, having vacated the order from which the appeal is taken, the appeal is dismissed as moot."

Very truly yours,

WILLIAM K. SUTER, Clerk

By

/s/ Francis J. Lorson

Francis J. Lorson
Chief Deputy Clerk

gj
cc: John D. French
Bruce D. Willis
Eldon J. Spencer, Jr.
Michael A. Fahey
Clerk, U.S. District Court for the District of Minnesota
(Your No. 4-91-202)

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

James Emison, Judy Fairbanks, Marie Iverson, Ken Dean, Steve Castillo, Lew Freeman, and Yao Lo, individually and on behalf of all Citizens and Voters of the State of Minnesota similarly situated,

Plaintiffs,

and

Patricia Cotlow, Phillip Krass, Sharon LaComb, James Stein, and Theodore Suss, individually and on behalf of all Citizens of Minnesota similarly situated,

Intervening Plaintiffs,

v.

Joan Growe, Secretary of State of Minnesota; and Dale G. Folstad, Hennepin county Auditor, individually and on behalf of all County Auditors of the State of Minnesota,

Defendants,

and

Civil File No. 4-91-202

ORDER

The Seventy-seventh Minnesota State House of Representatives and the Seventy-seventh Minnesota State Senate,

Defendant-Intervenors,

and

Patrick O'Connor, Hennepin County Auditor, individually and on behalf of all County Auditors of the State of Minnesota,

Defendant-Intervenor.

AND

Duane Benson, Terry Dempsey, Delores Hettig, Richard Harmon, David E. Peterson, E.M. Patricia Pidcock, and Frank Ringsmith,

Plaintiffs,

v.

Joan Growe, Secretary of State of the State of Minnesota,

Defendant,

and

Patrick O'Connor, Hennepin County Auditor, individually and on behalf of all County Auditors of

the State of Minnesota,

Defendant-Intervenor.

IT IS HEREBY ORDERED that the hearing scheduled for Tuesday, February 4, 1992, is canceled.

Dated: January 31, 1992.

BY THE COURT:

/s/
Paul A. Magnuson
United States District
Court Judge

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

James Emison, Judy Fairbanks, Marie Iverson, Ken Dean, Steve Castillo, Lew Freeman, and Yao Lo, individually and on behalf of all Citizens and Voters of the State of Minnesota similarly situated,

Plaintiffs,

and

Patricia Cotlow, Phillip Krass, Sharon LaComb, James Stein, and Theodore Suss, individually and on behalf of all Citizens of Minnesota similarly situated,

Intervening Plaintiffs,

vs.

Joan Growe, Secretary of State of the State of Minnesota; Mark Lundgren, Carver County Auditor, individually and on behalf of all County Auditors of the State of Minnesota,

Defendants,

and

The Seventy-seventh Minnesota

Civil File No. 4-91-202

ORDER

State House of Representatives
and the Seventy-seventh Minnesota
State Senate,

Defendant-Intervenors.

AND

Duane Benson, Terry Dempsey,
Delores Hettig, Richard Harmon,
David E. Peterson, E.M. Patricia
Pidcock, and Frank Ringsmuth,

Plaintiffs,

vs.

Joan Growe, Secretary of State
of the State of Minnesota,

Defendant.

Court File No. 4-91-603

The motion filed on behalf of the intervening plaintiffs for reconsideration of stay and for other relief is hereby denied.

IT IS SO ORDERED.

DATED: February 11, 1992.

BY THE COURT

/s/
Donald P. Lay
United States Circuit Judge

STATE OF MINNESOTA — DISTRICT COURT

COUNTY OF HENNEPIN — FOURTH JUDICIAL DISTRICT

CASE TYPE: OTHER CIVIL

Patricia Cotlow, Phillip Krass
Sharon LaComb, James Stein and
Theodore Suss, individually and
and on behalf of all Citizens of
Minnesota similarly situated,

Plaintiffs,

vs.

Joan Growe, Secretary of
State of Minnesota; and
Dale G. Folstad, Hennepin County
Auditor, individually and on behalf
of all Minnesota county chief
election officers,

Defendants.

COMPLAINT

Plaintiffs, for their cause of action, state and allege as follows:

PARTIES

1. Plaintiffs are citizens and qualified voters of the United States of America and of the State of Minnesota residing in various

counties, legislative districts and congressional districts in the State of Minnesota, as appears with greater particularity in Exhibit "A" which is attached hereto and made a part hereof by reference.

2. Plaintiffs bring this action individually and on behalf of themselves and all other citizens and voters of the United States of America who reside in the State of Minnesota and who are similarly situated as having been denied Equal Protection of the laws as further stated herein. This class is so numerous as to make joinder impossible and impractical; there are common questions of law and fact which predominate over individual questions of law and fact; the claims of the named individuals are typical of the claims of the members of this class; and these Plaintiffs will fully and adequately represent and protect the interests of the class. In addition, the prosecution of separate actions by individual members of the class would create a risk of inconsistency or varying adjudications which would establish incompatible standards of conduct for the named Defendants. The common questions of law which predominate are (1) the constitutionality of the scheme of legislative apportionment set forth in Minnesota Statutes §§2.019 and 2.042 through 2.702 and (2) the constitutionality of the current plan of congressional redistricting set forth in LaComb v. Growe, 541 F. Supp. 145 (D. Minn. 1982), both of which are being enforced by the Defendants.

3. The Defendants are each citizens of the United States and of the State of Minnesota, residing in the State of Minnesota. Defendant Joan Growe is the duly elected, qualified and acting Secretary of State of Minnesota. On information and belief, she resides in Hennepin County, Minnesota. Under the provisions of Minnesota Statutes 1990 Chapters 200 through 211 inclusive, she is charged, in her official capacity, with the duty of keeping records of state elections, giving notice of state elections, receiving

the filings of candidates for state elective offices, preparing ballots and instructions to voters, distributing copies of the election laws of the State of Minnesota, receiving election returns, furnishing blank election ballots and forms to the several county auditors, furnishing certificates of election to successful legislative candidates in multi-county districts and to successful candidates for election to the United States Congress, serving on the State Canvassing Board, and various other election duties.

4. Defendant Dale G. Folstad, is the duly qualified and acting Auditor of Hennepin County, State of Minnesota. As such he is the Hennepin County Chief election officer.

5. This action is brought against Defendant Dale G. Folstad as Hennepin County Auditor, individually and as representative of all other county auditors and/or chief county election officers similarly situated in the State of Minnesota; such persons being so numerous as to make it impracticable to bring them all before the Court by way of joinder; there are predominantly common questions of law, to wit, the constitutionality under the United States and Minnesota constitutions of (a) the legislative apportionment system set forth in Minnesota Statutes §§2.019 and 2.042 through 2.702 and (b) the current plan of congressional redistricting as set forth by the Court in LaComb v. Growe, 541 F. Supp. 145 (D. Minn. 1982); the defenses of the named Defendants will fairly and adequately protect the interests of the class; and the prosecutions of separate actions against individual members of the class would create a risk of inconsistent or varying adjudications which would establish incompatible standards of conduct for Plaintiffs.

6. Said county auditors and chief county election officials, however designated or titled, are charged with various election duties in their respective counties, including but not limited to

preparation of ballots, furnishing of ballots, canvassing of returns of legislative and congressional elections; providing certificates of election to successful legislative and congressional candidates in single county legislative districts; certifying to the Secretary of State the results of the canvass in their respective counties and various other miscellaneous duties with respect to primary, general and special elections.

COUNT I

LEGISLATIVE MALAPPORTIONMENT

7. This case arises under the Fourteenth Amendment, Section 1 to the Constitution of the United States which provides in pertinent part:

> "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The provisions thereof guaranty to the citizens of each state the right to vote in State and Federal elections and that the vote of each shall be equally effective with any other vote cast in such elections. A state statute which effects a legislative apportionment which invidiously discriminates against voters in highly populous districts and prefers other voters in the least populous districts violates the above quoted constitutional provision.

This case also arises under the Fifth Amendment to the Constitution of the United States which provides in pertinent part:

> "No person shall . . . be deprived of life, liberty or property without due process of law."

Minnesota Statutes §§2.019 and 2.042 through 2.702 effect an apportionment which invidiously discriminates against voters in the

more highly populous districts including plaintiffs and prefers other voters in the least populous districts in violation of the Fifth and Fourteenth Amendments to the United States Constitution.

8. This case also arises under Article IV, Section 2 of the Minnesota State Constitution which provides:

> "The number of members who compose the senate and house of representatives shall be prescribed by law. The representation in both houses shall be apportioned equally throughout the different sections of the state in proportion to the population thereof."

9. Article IV, Section 3 of the Minnesota State Constitution provides:

> "The legislature shall have the power to provide by law for an enumeration of the inhabitants of this state and also have the power at their first session after each enumeration of the inhabitants of this state made by the authority of the United States, to prescribe the bounds of congressional, senatorial and representative districts, and to apportion the new senators and representatives among the several districts according to the provisions of section Second this Article."

10. Plaintiffs as citizens of the United States and of the State of Minnesota have the right conferred by the above provisions of the Minnesota Constitution to have the entire membership of the Minnesota Legislature apportioned and elected on the basis of the 1990 Federal Census. The intent and the purpose of the aforesaid provisions of the Minnesota Constitution is to require that the members of the Legislature be elected by the people of Minnesota on a basis of equal representation of the individual electors in the state and that the Minnesota State Senators and Representatives must be equally apportioned throughout the state in districts which

are arranged in proportion to the number of inhabitants therein.

. 11. On information and belief, the United States Census for the 1990 shows that the state legislative districts as established and set forth in Minn. Stat. 1990, §§2.019 and 2.042 through 2.702 are unequally apportioned; the legislature of the State of Minnesota has adopted no legislative apportionment system since 1983 when it legislatively adopted the apportionment of legislative districts set forth by the United States District Court for the District of Minnesota in the case of LaComb v. Growe, 541 F. Supp. 160 (D. Minn. 1982) (Minn. Stat. 2.019, Subd. 1); that despite the compilation of the 1990 census, the legislature has failed and neglected to reapportion the legislative districts in the State of Minnesota and will unless otherwise ordered, continue to fail and neglect to reapportion those districts; and the present apportionment of the state legislative districts is not based on any logical or reasonable formula whatsoever, but is arbitrary and capricious.

12. The unequal representation reflected in the statutes cited above, deprives Plaintiffs and all other voters of the highly populated districts of the rights guaranteed to them by the Fourteenth Amendment to the United States Constitution including their rights of Due Process of Law and Equal Protection of the laws. It also deprives them of their rights as guaranteed by the above quoted provisions of the Minnesota State Constitution.

13. The common relief sought against the defendants in their official capacities relates to their respective jurisdictions in carrying out the election laws of the State of Minnesota with respect to the election of senators and representatives of said State Legislature calling for elections therefor; and the taking of all steps necessary to hold all elections both nominating and general, and all matters relating to the election of state representatives and senators to the Minnesota State Legislature.

14. The Legislature of the State of Minnesota will not pass a law reapportioning itself in conformity with the United States Constitution and the Constitution of the State of Minnesota which law will be signed by the governor of the State of Minnesota, during the 1991 Legislative Session. The Plaintiffs allege on information and belief that all of the Defendants intend to and will, unless sooner restrained by an Order of this Court, conduct the election for the next legislature, namely the 1993 legislature, during the year 1992, on the basis of the senatorial and representative districts set forth in Minn. Stat. §§2.019 and 2.042 through 2.702, and that until there is legislative reapportionment, Defendants will continue to do so in subsequent elections of members of the Minnesota state legislature.

15. Plaintiffs further allege that they intend to and will vote in the state primary and general elections in 1992 and thereafter for candidates for state legislative offices; and that said elections conducted in accordance with Minn. Stat. §§2.019 and 2.042 through 2.702 will continue to deprive Plaintiffs of their rights guaranteed under the Constitution of the United States and the Constitution of the State of Minnesota.

16. In the absence of reapportionment of the legislative districts of the State of Minnesota in conformity with the Minnesota Constitution, any action of these Defendants in conducting an election for members of the Minnesota Legislature in accordance with the districts prescribed by Minn. Stat. §§2.019 and 2.042 through 2.702, has deprived and will continue to deprive Plaintiffs of their constitutional rights in that:

(a) They are and will be arbitrarily deprived of liberty and property without Due Process of law, and are and will be arbitrarily deprived of the Equal Protection of the laws in violation of the Fourteenth Amendment to the Constitu-

tion of the United States.

(b) They are and will be deprived of liberty and property contrary to Article I, Section 7 of the Minnesota Constitution.

(c) They are and will be to substantial measure, disenfranchised and deprived of their rights and privileges, all in violation of Article I, Section 2 of the Minnesota Constitution.

(d) They are and will be deprived of an equally apportioned state legislature as guaranteed by Article 4, Sections 2 and 3 of the Minnesota Constitution.

(e) Their right to vote, as guaranteed by Article 7, Section 1 of the Minnesota Constitution, is and will continue to be abridged, diluted and infringed.

17. By reason of the failure of the Legislature and Governor of the State of Minnesota to reapportion the legislative districts of the state in conformity with the Minnesota Constitution, thus violating the constitutional rights of these Plaintiffs and of all other members of the class of citizens and voters whom they represent, a justiciable controversy exists.

COUNT II

CONGRESSIONAL REDISTRICTING

18. Plaintiffs reallege Paragraphs 1 through 6 hereof.

19. This case arises under the Fourteenth Amendment, Section 1 of the Constitution of the United States which provided in pertinent part:

> No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal

protection of the laws.

The provisions thereof guaranty to the citizens of each state the right to vote in State and Federal elections and that the vote of each shall be equally effective with any other vote cast in such elections. State action which enforces or effects or a congressional apportionment which invidiously discriminates against voters in highly populous districts and prefers other voters in the least populous districts violates the above quoted constitutional provision.

20. Article IV, Section 3 of the Minnesota State Constitution provides:

> At its first session after each enumeration of the inhabitants of this state made by the authority of the United States, the legislature shall have the power to prescribe the bounds of congressional and legislative districts.

21. Plaintiffs as citizens of the United States and of the State of Minnesota have the right conferred by the above provision of the Minnesota Constitution to have all Representatives in Congress from the State of Minnesota apportioned and elected on the basis of the 1990 Federal Census. The intent and purpose of the aforesaid provision of the Minnesota Constitution is to require that Representatives in Congress be elected by the people of the State of Minnesota on a basis of equal representation of the individual electors in the state and that the Minnesota Representatives in Congress from the State of Minnesota must be equally apportioned throughout the state in districts which are arranged in proportion to the number of inhabitants therein.

22. On information and belief, the United States Census for 1990 shows that the congressional districts as established by the Court in LaComb v. Growe, 541 F. Supp. 145 (D. Minn. 1982) are now unequally apportioned; that despite the compilation of said

Census, the Legislature has failed and neglected to reapportion lawfully the congressional districts in the State of Minnesota; and the present apportionment of the congressional districts is not based upon any logical or reasonable formula whatsoever, but is arbitrary and capricious. The estimated present population of each congressional district as now set forth in LaComb v. Growe, 541 F. Supp. 145 (D. Minn. 1982), appear more fully in Exhibit "B" which is attached hereto and made a part hereof by reference.

23. The unequal representation reflected in Exhibit "B" deprives plaintiffs and all other voters of the highly populated districts of the rights guaranteed to them by the Fourteenth Amendment to the Constitution of the United States including their rights of Due Process of Law and the Equal Protection of the laws. It further deprives them of their rights as guaranteed by the above quoted provisions of the Minnesota State Constitution.

24. The common relief sought against all defendants in their official capacities related to their respective jurisdictions in carrying out the election laws of the State of Minnesota with respect to the election of Representatives in Congress calling for elections therefor; the appointment of election judges therefor; the registration of qualified voters therefor; the holding of elections therefor; the certifying of the result of said elections; the preparation of ballots therefor, and the taking of all steps necessary to hold all elections both nominating and general, and all matters relating to the election of Representatives in Congress.

25. The plaintiffs are informed and believe and, therefore, allege that the Legislature of the State of Minnesota will not pass a law reapportioning the congressional districts in conformity with the United States Constitution and the Constitution of the State of Minnesota during the 1991 Legislative Session. The plaintiffs further allege on information and belief that all of the defendants

intend to and will, unless sooner restrained by an order of this Court, conduct the next election for Representatives in Congress during the year 1992, on the basis of the current congressional districts and that until there is congressional reapportionment, defendants will continue to do so in subsequent elections of Representatives in Congress.

Plaintiffs further alleges that they intend to and will vote in the state primary and general election in 1992 and thereafter for candidates for Representatives in Congress; and that said elections conducted in accordance with the present districts will continue to deprive plaintiffs and the class that they represent of their rights guaranteed under the Constitution of the United States and of the State of Minnesota.

26. In the absence of reapportionment of the congressional districts of the State of Minnesota in conformity with the United States Constitution and the Minnesota Constitution, any action of these defendants in conducting an election for Representatives in Congress in accordance with the present districts has deprived and will continue to deprive plaintiffs of their constitutional rights in that:

(a) They are and will be arbitrarily deprived of liberty and property without due process of law, and are and will be arbitrarily deprived of the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

(b) They are and will be deprived of liberty and property contrary to Article I, Section 7 of the Minnesota Constitution.

(c) They are and will be in substantial measure, disenfranchised and deprived of their rights and privileges, all in violation of Article I, Section 2 of the Minnesota Constitution.

(d) They are and will be deprived of equally apportioned

congressional districts as guaranteed by Article 4, Section 3 of the Minnesota Constitution.

(e) Their right to vote, as guaranteed by Article 7, Section 1 of the Minnesota Constitution, is and will continue to be abridged, diluted and infringed.

27. By reason of the failure of the Legislature of the State of Minnesota to reapportion the congressional districts of the state in conformity with the Federal and Minnesota Constitutions, thus violating the constitutional rights of these plaintiffs and of all other members of the class of citizens and voters whom they represent, a justiciable controversy exists.

JURISDICTION

28. This Court has authority under and by virtue of 42 U.S.C. § 1983 et. seq. to enforce the Plaintiffs' United States Constitutional rights set forth above and has general jurisdiction to enforce the Plaintiffs' Minnesota constitutional rights set forth in Counts I and II above.

29. This Court also has jurisdiction under the provisions of M.S.A. §555.01 and §555.08 through 555.12 to grant the relief requested herein.

WHEREFORE, plaintiffs pray for relief as follows:

1. That this Court declare the rights of the plaintiffs and the class they represent in the premises, to wit:

   (a) that the present legislative apportionment of the State of Minnesota as set forth in Minnesota Statutes § 2.019 and 2.042-2.702 has deprived and continues to deprive plaintiffs and their class of their liberty and property without Due Process of law and has denied and continues to deny the plaintiffs Equal Protection of the law, all in violation of the Fourteenth Amendment to the Constitution of the United States; and

   (b) the present scheme of congressional apportionment deprives plaintiffs and the class they represent of Due Process of Law and Equal Protection of the law all in violation of the Fourteenth Amendment to the Constitution of the United States.

2. The Court declare that Minnesota Statute §§2.042 through 2.072 unlawfully impairs the rights of the plaintiffs and the class they represent as guaranteed by Article 1, Section 2 and Article 4, Sections 2 and 3 of the Minnesota Constitution.
3. The Court issue its permanent injunction and judgment decreeing that the plan of legislative apportionment set forth in Minnesota Statute § 2.019 and 2.042 through 2.702 may not hereafter be used as a valid plan and scheme of legislative apportionment.
4. The Court permanently restrain the defendants and the class of persons they represent from receiving nominations and petitions for legislative office, from issuing certificates of nominations and elections, and from all further acts necessary to the holding of elections for members of the Minnesota Legislature in the districts set out and described in Minnesota Statutes §§2.042 through 2.702 until such time as the legislature passes and the governor approves legislation reapportioning the state legislative districts in accordance with the Constitution of Minnesota and the Due Process and Equal Protection clauses of the United States Constitution.
5. The Court notify the Legislature of the State of Minnesota presently in session, that it shall retain jurisdiction of this cause during the terms of such legislature to determine at the end thereof whether any new legislative apportion-

ment system has been devised to meet the requirements of the Fourteenth Amendment to the Constitution of the United States and the provisions of the Constitution of the State of Minnesota and for further hearings herein to determine the validity of any new legislative apportionment law as may be enacted; and in the absence of the enactment of a constitutionally valid method of legislative apportionment by said Legislature that this Court will make a determination of a proper legislative apportionment system for the State of Minnesota.

6. The Court declare that the present plan of Congressional districts unlawfully impairs the rights of the plaintiffs and the class they represent as guaranteed by Article 4, Section 3 and Article 1, Section 2 of the Minnesota Constitution.
7. The Court issue its permanent injunction and judgment decreeing that the plan of congressional apportionment set forth in the present plan of Congressional districts as set forth in LaComb v. Growe, 541 F. Supp. 145 (D. Minn. 1982) may not hereafter be used by Defendants as a valid plan and scheme of congressional apportionment.
8. The Court permanently restrain the Defendants and the class of persons they represent from receiving nominations and petitions for Congressional office, from issuing certificates of nomination and election and from all further acts necessary to the holding of elections for members of Congress in the districts set out and described in Appendix A to the decree of the Court in LaComb v. Growe, 541 F. Supp. 145 (D. Minn. 1982) until such time as the legislature passes and the governor approves legislation apportioning the eight (8) Minnesota Congressional districts in accordance with the Constitution of Minnesota and the Due Process and Equal Protection clauses of the United States Constitution.

9. The Court notify the Legislature of the State of Minnesota presently in session, that it Court shall retain jurisdiction of this cause during the terms of such legislature to determine at the end thereof whether any new congressional apportionment system has been devised to meet the requirements of the Fourteenth Amendment to the Constitution of the United States and the provisions of the Constitution of the State of Minnesota and for further hearings herein to determine the validity of any new congressional apportionment law as may be enacted; and in the absence of the enactment of a constitutionally valid method of congressional apportionment by said Legislature that this Court will make a determination of a proper congressional apportionment system for the State of Minnesota.
10. The Court order defendants to pay to plaintiffs, pursuant to 42 U.S.C. §1988 and Minn. Stat. § 555.08, their reasonable attorneys fees and expenses, expert fees, costs and other expenses incurred in prosecuting this action.
11. For such other and future relief as is just in the circumstances.

Dated: January 24, 1991

/s/

Alan W. Weinblatt
Weinblatt and Davis
Attorney for Plaintiffs
1616 Pioneer Building
St. Paul, MN 55101

Telephone: (612) 292-8770
Atty. Regis. No. 115332

ACKNOWLEDGMENT

The undersigned hereby acknowledges that costs. disbursements and reasonable attorney and witness fees may be awarded pursuant to Minn. Stat. §549.21, subd. 2, to the party against whom the allegations in this pleading are asserted.

/s/
ALAN W. WEINBLATT

EXHIBIT A

Plaintiff	Legislative District	Congressional District	County
Patricia Cotlow	48A	6	Hennepin
Phillip Krass	42A	3	Hennepin
Sharon LaComb	37A	3	Dakota
Theodore Suss	36A	3	Scott
James Stein	38B	4	Dakota

EXHIBIT B

	1980 Population	1990 Population	Net Change	% Change
State	4,075,970	4,362,938	+286,968	+ 7.0%
District				
1	509,460	528,955	+ 19,495	+ 3.8%
2	509,500	478,744	- 30,756	- 6.0%
3	509,499	663,100	+153,601	+30.1%
4	509,499	534,974	+ 25,475	+ 5.0%
5	509,506	499,270	- 10,236	- 2.0%
6	509,505	652,674	+143,169	+28.1%
7	509,495	515,681	+ 6,186	+ 1.2%
8	509,506	489,540	- 19,966	- 3.9%

STATE OF MINNESOTA
DISTRICT COURT

COUNTY OF HENNEPIN
FOURTH JUDICIAL DISTRICT

CASE TYPE: OTHER CIVIL

Patricia Cotlow, Phillip Krass
Sharon LaComb, James Stein and
Theodore Suss, individually
and on behalf of all Citizens of
Minnesota similarly situated,

Plaintiffs,

vs.

Joan Growe, Secretary of
State of Minnesota; and
Dale G. Folstad, Hennepin County
Auditor, individually and on behalf
of all Minnesota county chief
election officers,

Defendants.

Court File No.
MX 91-001562

STIPULATION

IT IS HEREBY STIPULATED AND AGREED by and between the parties hereto through their respective undersigned attorneys as follows:

1. Pursuant to Minn. Stat. §§ 484.01, *et seq.* (1990). this Court has Jurisdiction of the subject matter of all of the allegations contained in the Complaint filed herein.

2. This Court has jurisdiction to hear and determine cases arising under 42 U.S.C. § 1983.

3. Plaintiffs herein possess the requisite standing and Defendants are the appropriate parties.

4. The action may be maintained as a class action, it being stipulated that the class is so numerous that joinder of all members is impracticable. there are questions of law common to the class, the claims of the named plaintiffs are typical of the claims of the class, the named plaintiffs will fairly and adequately protect the interests of the class, the prosecution of separate actions by individual members of the class would create the risk of inconsistent or varying adjudications, the common questions of law predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The class consists of Minnesota voters the effectiveness of whose votes has become diluted as a result of population increases in the legislative and/or congressional districts in which they reside. These population increases are reflected in the 1990 Federal Census.

5. The present apportionment of legislative districts set forth in Minn. Stat. §§ 2.019 and 2.042 through 2.702 contravene the provisions of the United States Constitution, Amendment 14, Section 1, and the Minnesota Constitution. Article 4, Section 2 and Article 4, Section 3. as a result of changes in the population of the legislative districts reflected in the 1990 Federal Census.

6. The plan of legislative apportionment contained in Minn. Stat. §§ 2.019 and 2.042 through 2.702 shall not be used by the Defendants for legislative elections to be held in November, 1992, or for any other purpose except for special legislative elections required to be held by law, unless otherwise ordered by this court.

7. The current plan of congressional redistricting as set forth

in Appendix A to *LaComb v. Growe*, 541 F. Supp. 145 (D. Minn. 1982) contravenes the provisions of the United States Constitution, Amendment 14, Section 1, and the Minnesota Constitution, Article 4, Section 2, and Article 4, Section 3, as a result of changes in the population of the congressional districts reflected in the 1990 Federal Census.

8. The plan of congressional redistricting contained in Appendix A to the court's order in *LaComb v. Growe*, 541 F. Supp. 145 (D. Minn. 1982) shall not be used by Defendants for congressional elections to be held in November, 1992, or for any other purpose except for special congressional elections required to be held by law, unless otherwise ordered by this Court.

9. The Chief Judge of Hennepin County District Court may request the Chief Justice of the State of Minnesota to exercise the Supreme Court's inherent authority to appoint a panel of three district and/or appellate judges to hear and decide the within action and all motions and proceedings arising therefrom.

10. A three judge panel appointed by the Chief Justice of the State of Minnesota or a single judge of the District Court of Hennepin County, Minnesota, may enter an Order incorporating the terms of paragraphs 5 and 7 of this Stipulation.

WEINBLATT AND DAVIS

/s/

ALAN W. WEINBLATT
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1616 Pioneer Building
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(612) 292-8770

Attorneys for Plaintiffs

Dated: February 25, 1991

HUBERT H. HUMPHREY, III
Attorney General
State of Minnesota

By: /s/
JOHN R. TUNHEIM
Chief Deputy
Attorney General
Atty. Ret. No. 122580

102 State Capitol
St. Paul, MN 55155
(612) 296-2351

Attorneys for Defendnants Joan Growe and State of Minnesota
Dated: February 22, 1991

/s/
MICHAEL O. FREEMAN
Hennepin County Attorney
Atty. Reg. No. 31860

A-2000 Hennepin County
Goverment Center
300 South Sixth Street
Minneapolis, MN 55487
(612) 348-3099

Attorney for Defendants Dale Folstad and Hennepin County
Dated: February 22, 1991

STATE OF MINNESOTA
IN SUPREME COURT

C8-91-985

Patricia Cotlow, Phillip Krass, Sharon LaComb, James Stein and Theodore Suss, individually and on behalf of all Citizens of Minnesota similarly situated,

Plaintiffs,

vs.

Joan Growe, Secretary of State of Minnesota; and Dale G. Folstad, Hennepin County Auditor, individually and on behalf of all Minnesota county chief election officers,

Defendants

ORDER

WHEREAS, pending in the Hennepin County District Court is the action commenced by Patricia Cotlow, et al. (Case No. MX 91-001562) challenging the apportionment of state legislative and congressional districts and

WHEREAS, this court has been requested informally to appoint a panel of three judges to hear and decide the matter on its merits, as well as any and all motions or other proceedings arising in connection therewith;

IT IS HEREBY ORDERED that the Honorable Harriet Lansing, Judge of the Court of Appeals; the Honorable

William E. Walker, Judge of the Seventh Judicial District; and the Honorable Kenneth J. Maas, Jr., Judge of the Tenth Judicial District are appointed to hear and decide all matters, including all pretrial and trial motions, in connection with the panels' ultimate disposition of the above-entitled action. See Minn. Stat. § 2.724, subd. 1 (1990).

Dated: June 4, 1991

BY THE COURT:

/s/
Chief Justice

STATE OF MINNESOTA

SPECIAL REDISTRICTING PANEL

MX 91-001562

Patricia Cotlow, Phillip Krass
Sharon LaComb, James Stein, and
Theodore Suss, individually and
on behalf of all Citizens of
Minnesota similarly situated,

Plaintiffs,

PRETRIAL ORDER NO. 1

and

John Walker, Howard Miller,
Don Sudor, and Nkajlo Vangh,

Applicants for Intervention,

vs.

Joan Growe, Secretary of State
of Minnesota; and Dale G. Fostad,
Hennepin County Auditor,
individually and on behalf of
all Minnesota county chief
election officers,

Defendants,

and

The Seventy-seventh Minnesota

State House of Representatives
and the Seventy-seventh Minnesota
State Senate,

Defendant-Intervenors.

The above-entitled matter was called for pretrial conference pursuant to Minn. R. Civ. P. 16.01 before the Honorable Harriet Lansing, Honorable William E. Walker, and Honorable Kenneth J. Maas, Jr., on July 26, 1991.

Plaintiffs appeared by Alan Weinblatt, Weinblatt & Davis, 336 Robert Street, Suite 1616, St. Paul, Minnesota, 55101.

Defendant Dale G. Folstad appeared by Hennepin County Attorney Michael Freeman, A-2000 Hennepin County Government Center, 300 South Sixth Street, Minneapolis, Minnesota, 55487.

Defendant Joan Growe appeared by Chief Deputy Attorney General John R. Tunheim, Office of the Attorney General, 102 State Capitol, St. Paul, Minnesota, 55155.

Defendant-Intervenors appeared by John D. French, Faegre & Benson, 2300 Norwest Center, Minneapolis, Minnesota, 55402.

Plaintiff-Intervenors appeared by Bruce D. Willis, Popham, Haik, Schnobrich, Kaufman, Ltd., 3300 Piper Jaffray Tower, 222 Ninth Street South, Minneapolis, Minnesota, 55402.

All parties addressed the Court regarding intervention and stipulated to intervention by Walker, Miller, Sudor, and Vangh as Plaintiff-Intervenors. Plaintiffs agreed to withdraw their objection to intervention, and Plaintiff-Intervenors agreed not to seek to remove this action to federal court.

The parties acknowledged this Court's subject matter jurisdiction, and this Court concludes that it has jurisdiction over the subject matter of this action. See Minn. Const. art. I, §§ 2, 3;

Scott v. Germano, 381 U.S. 407, 410, 85 S. Ct. 1525, 1527 (1965)(recognizing state judiciary's authority to require valid reapportionment and to formulate redistricting plan).

Each party proposed a schedule to the Court. In view of the important state interests implicated in this proceeding, this Court must proceed as expeditiously as possible to resolve the parties' respective claims. Accordingly, based upon the parties' stipulation, the entire file, and arguments of counsel, and in conformance with the June 4, 1991 order of the Minnesota Supreme Court, this Court orders:

1. Pursuant to Rule 24 of the Minnesota Rules of Civil Procedure and the stipulation of the parties, John Walker, Howard Miller, Don Sudor, and Nkajlo Vangh are permitted to intervene in this action as Plaintiff-Intervenors.

2. Proposals regarding the criteria to be used in formulating an appropriate redistricting plan shall be submitted by the Defendant-Intervenors to this Court by Friday, August 9, 1991. Counsel for the Defendant-Intervenors has offered to provide this Court with documentation criteria adopted by the Defendant-Intervenors in formulating the redistricting plan that is the subject of litigation pending in Ramsey County entitled The Seventy-seventh Minnesota State Senate and the Seventy-seventh Minnesota State House of Representatives v. Arne Carlson, et al, Court File No. C3-91-7547, and we request that these materials also be submitted by August 9, 1991. Any responses to the criteria submitted must be filed with this Court by Tuesday, August 13, 1991.

Assuming conformity by the parties with this order, this Court will issue an order by Friday, August 16, 1991, specifying the criteria to be used in formulating proposed redistricting plans.

Proposed redistricting plans shall be submitted by Friday, August 30, 1991.

3. To assess the capability of the Minnesota State Legislature's redistricting facilities and the feasibility of using its system to devise an appropriate redistricting plan, this Court shall tour the legislature's redistricting computer center. We request that counsel for Defendant-Intervenors arrange this tour for the afternoon of Tuesday, August 20, 1991.

4. A copy of this order shall be published.

Dated: July 29, 1991

BY THE COURT:

Honorable Harriet Lansing

Honorable Kenneth J. Maas, Jr.

Honorable William E. Walker

STATE OF MINNESOTA

SPECIAL REDISTRICTING PANEL

MX 91-001562

Patricia Cotlow, Phillip Krass
Sharon LaComb, James Stein, and
Theodore Suss, individually and
on behalf of all Citizens of
Minnesota similarly situated,

Plaintiffs,

and

John Walker, Howard Miller,
Don Sudor, and Nkajlo Vangh,

Applicants for Intervention,

vs.

Joan Growe, Secretary of State
of Minnesota; and Dale G. Folstad,
Hennepin County Auditor,
individually and on behalf of
all Minnesota county chief
election officers,

Defendants,

and

The Seventy-seventh Minnesota
State House of Representatives

PRETRIAL ORDER NO. 2

Establishing Preliminary Criteria for Legislative Congressional Redistricting, Directing Oral Argument on Reserved Issues, and Setting Comprehensive Timetable

and the Seventy-seventh Minnesota
State Senate,

Defendant-Intervenors.

In Pretrial Order Number One, the parties were required to submit proposals for criteria to be used in formulating an appropriate congressional and legislative redistricting plan for the State of Minnesota. After issuance of that order the Ramsey County District Court, in Seventy-seventh Minn. State Senate v. Carlson, No. C3-91-7547 (Minn. Dist. Ct., 2d Judicial Dist., Aug. 2, 1991) determined that Chapter 246, S.F. No. 1571, passed by the legislature May 18, 1991, changing the boundaries of Minnesota legislative districts, was not effectively vetoed and became a validly enacted law of the State of Minnesota. In light of this decision, and the governor's subsequent announcement that the order would not be appealed, the panel has revised the proposed time schedule to provide an opportunity for motions or amendments relating to the validity of the current legislative redistricting and for oral argument on reserved criteria issues.

The preliminary criteria, based on the submission of the parties in conformance with Pretrial Order No. One shall be as follows:

Congressional

1. There will be eight districts, each entitled to elect a single member.

2. The districts will be as nearly equal in population as practicable. Because a court-ordered reapportionment plan must conform to a higher standard of population equality than a legislative reapportionment plan, de minimis deviation from the population norm will be the goal for establishing districts. See

Chapman v. Meier, 420 U.S. 1, 95 S. Ct. 751 (1975); Connor v. Finch, 431 U.S. 407, 97 S. Ct. 1828 (1977).

3. The districts will be composed of convenient contiguous territory structured into compact units. Contiguity by water is sufficient if the water is not a serious obstacle to travel within the district.

4. The districts will be numbered in a regular series, beginning with congressional district one in the southeast corner of the state and ending with district eight in the northeast corner of the state.

5. The districts must not dilute the voting strength of racial or language minority populations. Where a concentration of a racial or language minority makes it possible, the districts must increase the probability that members of the minority will be elected. Any plan adopted by the court shall comply with the applicable provisions of the Federal Voting Rights Act, 42 U.S.C. § 1971, et seq.

6. The districts will be drawn with attention to county, city and township boundaries. A county, city, or township will not be divided into more than one district except as necessary to meet equal population requirements or to form districts that are composed of convenient, contiguous and compact territory. When any county, city or township must be divided into one or more districts, it will be divided into as few districts as practicable. Reynolds v. Sims, 377 U.S. 533, 578-79, 84 S. Ct. 1362, 1390-91 (1964); Swann v. Adams, 385 U.S. 440, 444, 87 S. Ct. 569, 572 (1967).

7. The districts should attempt to preserve communities of interest when that can be done in compliance with the preceding standards. The panel may recognize a community's character as urban, suburban or rural. See Skolnick v. State Electoral Bd. of Ill., 336 F. Supp. 839 (N.D. Ill. 1971); LaComb v. Growe, 541 F.

Supp. 145 (D. Minn. 1982); LaComb v. Growe, 541 F. Supp. 160 (D. Minn. 1982); Maryland Citizens Comm. for Fair Congressional Redistricting, Inc. v. Tawes, 253 F. Supp. 731 (D. Md. 1966), aff'd sub. nom. Alton v. Tawes, 384 U.S. 315, 86 S. Ct. 1590 (1966). Additional communities of interest shall be considered if persuasively established and not in violation of applicable case law.

Legislative

1 The Senate must be composed of 67 members. The House of Representatives must be composed of 134 members.

2. Each district is entitled to elect a single member.

3. A representative district may not be divided in the formation of a senate district.

4. The districts must be substantially equal in population. The population of a district must not deviate from the ideal by more than two percent. Because a court-ordered reapportionment plan must conform to a higher standard of population equality than a legislative reapportionment plan, de minimis deviation from the population norm will be the goal for establishing districts. See Chapman, 420 U.S. 1, 95 S. Ct. 751; Connor, 431 U.S. 407, 97 S. Ct. 1828.

5. The districts must be composed of convenient contiguous territory structured into compact units. Contiguity by water is sufficient if the water is not a serious obstacle to travel within the district.

6. The districts must be numbered in a regular series, beginning with House district 1a in the northwest corner of the state and proceeding across the state from west to east, north to south, but bypassing the seven-county metropolitan area until the southeast corner has been reached; then to the seven-county metropolitan area outside the cities of Minneapolis and St. Paul; then in Minneapolis and St. Paul.

7. The districts must not dilute the voting strength of racial or language minority populations. Where a concentration of a racial or language minority makes it possible, the districts must increase the probability that members of the minority will be elected. Any plan adopted by the court shall comply with the applicable provisions of the Federal Voting Rights Act, 42 U.S.C. § 1971, et seq.

8. The districts will be drawn with attention to county, city and township boundaries. A county, city, or township will not be divided into more than one district except as necessary to meet equal population requirements or to form districts that are composed of convenient, contiguous and compact territory. When any county, city or township must be divided into one or more districts, it will be divided into as few districts as practicable. Reynolds v. Sims, 377 U.S. 533, 578-79, 84 S. Ct. 1362, 1390-91 (1964); Swann v. Adams, 385 U.S. 440, 444, 87 S. Ct. 569, 572 (1967).

9. The districts should attempt to preserve communities of interest when that can be done in compliance with the preceding standards. The panel may recognize a community's character as urban, suburban or rural. See Skolnick v. State Electoral Bd. of Ill., 336 F. Supp. 839 (N.D. Ill. 1971); LaComb v. Growe, 541 F. Supp. 145 (D. Minn. 1982); LaComb v. Growe, 541 F. Supp. 160 (D. Minn. 1982); Maryland Citizens Comm. for Fair Congressional Redistricting, Inc. v. Tawes, 253 F. Supp. 731 (D. Md. 1966), aff'd sub. nom. Alton v. Tawes, 384 U.S. 315, 86 S. Ct. 1590 (1966). Additional communities of interest shall be considered if persuasively established and not in violation of applicable case law.

Reserved Issues

1. Whether a provision prohibiting use of election data or voting patterns should be added to the standards.

2. Whether a provision allowing preservation of "prior

cores" should be added to the standards.

3. Whether a provision forbidding use of information on incumbents should be added to the standards.

4. Additional considerations in recognizing or rejecting communities of interest.

Timetable

Aug. 20, 1991 1:30	Tour of computer systems being used by the legislature for developing redistricting plans.
Aug. 27, 1991	Submission of any written materials relating to reserved issues in Preliminary Criteria Order.
Aug. 29, 1991 1:30	Oral argument on reserved issues in Preliminary Criteria Order, status briefing or argument on any motions or amendments as a result of decision in Seventy-seventh Minn. State Senate v. Carlson, No. C3-91-7547 (Minn. Dist. Ct., 2d Judicial Dist., Aug. 2, 1991). Stipulation of parties on population figures and base maps to be used in redistricting plan. Absent stipulation, oral argument.
Sept. 13, 1991	Issuance of Final Criteria Order and specification of form for submitting data.
Oct. 7, 1991	Submission of proposed redistricting plans together with written justification and graphs or maps required by Final Criteria Order.
Oct. 18, 1991	Submission of parties' written reaction to each other's plans.
Nov. 20, 1991	Distribution of panel's Redistricting Plan.

Nov. 30, 1991	Submission of parties' written responses to plan.
Dec. 7, 1991	Oral argument on plan.
Dec. 20, 1991	Issuance of final decision.

Dated: August 16, 1991 BY THE COURT:

Honorable Harriet Lansing
Honorable Kenneth J. Maas, Jr.
Honorable William E. Walker

Memorandum

The panel has considered and in large part adopted the standards unanimously passed by the Minnesota House and Senate. Because the Minnesota Constitution places primary responsibility for redistricting with the legislature, these standards have been accepted as preferred redistricting policy to the extent the standards apply to the panel's task and are not inconsistent with state or federal constitutional principles, state law or other recognized state policy. Several standards have been augmented or restated to incorporate applicable case law or appropriate suggestions by the parties. Standards reserved for oral argument have been submitted by separate parties, but not all parties have had an opportunity to respond. Because the timetable has been amended to permit response to the Ramsey County District Court's declaration that Chapter 246 is a validly enacted law of the State of Minnesota, the timetable can also permit oral argument on issues relating to the use of election data, prior cores, incumbency information and communities of interest.

STATE OF MINNESOTA

SPECIAL REDISTRICTING PANEL

C8-91-985

Patricia Cotlow, Phillip Krass
Sharon LaComb, James Stein, and
Theodore Suss, individually and
on behalf of all Citizens of
Minnesota similarly situated,

Plaintiffs,

and

John Walker, Howard Miller,
Don Sudor, and Nkajlo Vangh,

Plaintiff-Intervenors,

vs.

Joan Growe, Secretary of State
of Minnesota; and Patrick H.
O'Connor, Hennepin County Auditor,
individually and on behalf of all
Minnesota county chief election
officers,

Defendants,

and

PRETRIAL ORDER
NO. 3
Establishing Final Criteria for Redistricting, Staying the Time Periods for Local Governmental Units to Redefine Their Local Election Districts, Accelerating Time Schedule for Completing the Legislative Redistricting Plan, Designating Form for Submission of Plans, Granting Motions to Amend Defendant-Intervenors Complaint, and designating Issues for Oral Argument on September 24, 1991

The Seventy-seventh Minnesota
State House of Representatives
and the Seventy-seventh Minnesota
State Senate,

Defendant-Intervenors.

I.

Criteria

Pretrial Order No. 2 established preliminary criteria for redistricting, but reserved four issues for further argument by the parties. The parties submitted memoranda and addressed the reserved issues in oral argument on August 29, 1991. Based on the written and oral submissions, the panel orders the following:

Congressional

1. The preliminary congressional criteria in paragraphs 1 through 7 of Pretrial Order No. 2 are adopted as final criteria.

2. Past voting behavior and residency of incumbents shall not be used as criteria; however, they may be used to evaluate the fairness of plans submitted to the court.

Legislative

3. The preliminary legislative criteria in paragraphs 1 through 9 of Pretrial Order No. 2 are adopted as final criteria.

4. Past voting behavior and residency of incumbents shall not be used as criteria; however, they may be used to evaluate the fairness of plans submitted to the court.

II.

5. An additional criterion proposed by plaintiffs and defendant-intervenors, requesting that any plan for redrawing state legislative districts be based on Minnesota Laws 1991, Chapter 246 and necessary changes, is consolidated for consideration with

motions to be argued on September 24, 1991.

III.

Motion to Stay Time Period for Local Governments to Redefine Their Local Election Districts

6. The Hennepin County Auditor, on behalf of all chief election officials, requests an order to stay the time periods for local governments to redefine their local election districts. Minn. Stat. §§ 204B.135, 204B.14, 205.84, 205A.12, and 375.02 require local governmental units to redefine their local election districts within specific time periods following final redistricting.

These time periods were previously stayed on July 24, 1991 by order of the Ramsey County District Court. Judge Smith's determination in Seventy-seventh Minn. State Senate v. Carlson, No. C3-91-7547 (Minn. Dist. Ct., 2d Judicial Dist., Aug. 2, 1991) that Senate File No. 1571 (Chapter 246) and House File No. 635 (Chapter 349) were validly enacted into law implicitly requires the local governmental units to begin redistricting. The Hennepin County Auditor asserts that corrections affecting 17 counties, 44 cities and 17 towns must be made before local redistricting is possible. These corrections cannot be made by the legislature before it reconvenes in January.

The panel orders that the time periods within which local units of government are required to complete the redefining of the boundaries of election precincts, wards, or other local election districts pursuant to Minn. Stat. §§ 204B.135, 204B.14, 205.84, 205A.12, and 375.02 as amended by Minnesota Laws 1991, Chapter 349, are suspended until further order of this court.

IV.

Time Schedule

7. A majority of the parties to this action have requested that the panel accelerate the date for completion of the legislative

redistricting process to allow for orderly planning by local officials and candidates and proper notice to voters.

The panel recognizes the validity of these concerns and orders the following changes to the time schedule:

September 24, 1991 1:30 - Courtroom 200 Minnesota Judicial Building	Oral argument on issues designated in section VII.
October 7, 1991	Submission of proposed legislative redistricting plan.
October 16, 1991 1:30 - Courtroom 200 Minnesota Judicial Building	Submission of parties'written reaction to each other's plans and oral arguments contrasting, comparing and analyzing the plans.
November 20, 1991	Distribution of panel's legislative redistricting plan.
November 27, 1991	Submission of parties' written responses to legislative redistricting plan.
December 3, 1991	Oral arguments on redistricting plan.

The revised schedule will permit the panel to have a target date for completion of the legislative redistricting plan in the first week in December.

V.

Population Figures and Forms for Submission

8. The parties have agreed that the following population figures and base maps be used for purposes of the redistricting plan:

Census of Population and Housing, 1990: Public Law (P.L.) 94-171 (Minnesota) [machine-readable data files]/prepared by the Bureau of Census.

TIGER/Line Census Files, 1990 [machine-readable data files]/prepared by the Bureau of Census.

9. The legislative redistricting plans to be submitted on October 7, 1991 shall include the following:

a. a map of the state showing proposed districts and minor civil division boundaries in counties that are split between districts;

b. a map of the seven-county metropolitan area showing proposed districts, minor civil division boundaries, and census tract boundaries;

c. a map of the cities of St. Paul and Minneapolis showing city boundaries, street names, and census tract boundaries and, where census tracts are split, block boundaries;

d. a map of each municipality not wholly within one district or containing more than one whole district, showing census tract or enumeration district, block groups and block boundaries, where available;

e. a table showing the name or number designation and population of all proposed districts; the numerical and percentage deviation from the ideal district size of each district, the average deviation for all districts, and the total deviation for the state;

f. a table showing each county, minor civil division, and census tract that will lie in more than one proposed legislative district and including the population of each subunit so divided;

g. an additional table showing and report explaining how the parts of any divided unit add up to equal the populations of other complete districts and explaining discrepancies, if any, and a final addition of all district populations to a state total;

h. a table divided by legislative house ranking each district by percentage deviation and showing the district number, its population, and its population or numerical deviation;

i. a calculation of the population required to elect a majority of each legislative body;

j. a calculation of the ratio between the highest and lowest population district; and

k. a calculation of the mean deviation of all districts.

VI.

Pending Motions

Defendant-Intervenors' Motion to Amend

10. The Minnesota Legislature has moved to supplement and amend its answer by adding a claim for declaratory judgment. The counterclaim seeks a declaration that any court-ordered state legislative redistricting plan must make only those changes to Minnesota Laws 1991, Chapter 246 which are (1) necessary to correct constitutional or Voting Rights Act defects, (2) which respect the integrity of that law, and (3) which are consistent with the legislative history.

The counterclaim relates to events which have occurred since the date of the party's original pleading. Although significant issues have been raised relating to the propriety of granting a declaratory judgment, amendment is ordinarily freely granted,

unless doing so would result in undue prejudice to the adverse party. See Wilson v. City of Eagan, 297 N.W.2d 146, 151 (Minn. 1980).

Neither the plaintiffs nor the plaintiff-intervenors would be significantly prejudiced by our allowing the requested amendment at this time. Accordingly, permission to amend to add a counter-claim for declaratory judgment is granted. However, we caution that, by granting the defendants' motion, we express no opinion on the merits of the claim.

Plaintiff's Motions

11. Plaintiffs Cotlow, Krass, LaComb, Stein, and Suss have requested that the panel rule on whether Minnesota Laws 1991, Chapter 246 meets the requirements of the Federal Voting Rights Act, 42 U.S.C. §1973 (1988). Specifically, plaintiffs move the court to (a) affirm Minnesota Laws 1991, Chapter 246 as recommended for correction by the August 26, 1991 action of the Minnesota House of Representatives and Minnesota Senate Committees on Redistricting as the sole and exclusive plan of legislative redistricting for use by the State of Minnesota. In the alternative, the plaintiffs move the court to (b) adopt Chapter 246 and its corrections and any modifications required by the Voting Rights Act or the Minnesota and U.S. Constitutions, or to (c) adopt Minnesota Laws 1991, Chapter 246 as recommended for correction as the court's plan.

These motions and related issues are set for oral argument on September 24, 1991 at 1:30 in Courtroom 200 of the Minnesota Judicial Building.

Plaintiff-Intervenors' Motion

12. On September 11, 1991, plaintiff-intervenors moved to stay the state court redistricting proceedings.

VII.

September 24, 1991 Oral Argument

13. At the oral argument on September 24, 1991, the parties are asked to address the following issues:

a. Whether Minnesota Laws 1991, Chapter 246 violates the Minnesota or U.S. Constitutions or the Federal Voting Rights Act.
b. The pending motions described in Section VI.
c. The panel's proposed schedule and the concept of a plan with a delayed effective date.

VIII.

Miscellaneous

14. The caption is amended to substitute the name of the present Hennepin County Auditor, Patrick H. O'Connor, for the former Hennepin County Auditor, Dale G. Folstad.

15. Peter S. Wattson, Senate Counsel, Minnesota State Senate is added as attorney of record for the Minnesota State Senate, in association with John D. French and Michael Cheever in this proceeding.

Dated: September 13, 1991 BY THE COURT:

Honorable Harriet Lansing
Honorable Kenneth J. Maas, Jr.
Honorable William E. Walker

Memorandum

In staying the time period for local governmental units to redefine their local election districts and in accelerating the schedule to complete a legislative redistricting plan, the panel is responding to two valid concerns. First, local officials must have adequate time to redraw ward and precinct boundaries, establish

precinct polling locations, prepare for elections, and inform voters of all changes. Potential candidates must have adequate time to determine who their constituents will be and to establish residency. Voters must have adequate time to learn about the candidates and their positions. These interests require the court to act swiftly in resolving any disputes relating to a final redistricting plan. Second, we recognize that the Minnesota Constitution places the power and the responsibility of redistricting with the state legislature and governor. They cannot act until January, 1992.

To balance the need for expediency with the appropriate deference to the legislative function, the panel is now considering, if no pending motions are dispositive, a delayed effective date of the legislative redistricting plan. This procedure would permit the legislature and governor the maximum opportunity to act and would also provide adequate notice to all concerned persons of the alternative in the event the legislature and governor cannot agree upon a constitutional plan. All persons would have sufficient time to thoroughly analyze the plan, so that any review of it could be expedited. This procedure would eliminate any concern about the timeliness of the state court proceeding and allow for orderly expedition of any appeal. These accommodations would permit important state issues to be determined within the state courts and prevent a duplication of time and effort in other forums.

The time requirements for fashioning a congressional redistricting plan are not so immediate. In considering the schedule for congressional redistricting, the panel, because of the reduced time pressure, is not required to act until the legislature has had an opportunity to complete a congressional redistricting plan.

STATE OF MINNESOTA

SPECIAL REDISTRICTING PANEL

C8-91-985

Patricia Cotlow, Phillip Krass
Sharon LaComb, James Stein, and
Theodore Suss, individually and
on behalf of all Citizens of
Minnesota similarly situated,

Plaintiffs,

and

John Walker, Howard Miller,
Don Sudor, and Nkajlo Vangh,

Plaintiff-Intervenors,

vs.

PRETRIAL ORDER NO. 4

Joan Growe, Secretary of State
of Minnesota; and Patrick H.
O'Connor, Hennepin County Auditor,
individually and on behalf of all
Minnesota county chief election
officers,

Defendants,

and

The Seventy-seventh Minnesota
State House of Representatives
and the Seventy-seventh Minnesota

State Senate,

Defendant-Intervenors.

At oral argument on September 24, 1991, the parties addressed the issues designated in Pretrial Order No. 3: (1) whether Minnesota Laws 1991, Chapter 246 violates the Minnesota or U.S. Constitutions or the Federal Voting Rights Act; (2) plaintiff-intervenors' motion to stay these proceedings and, if denied, to certify the issue to the Minnesota Supreme Court as important and doubtful or otherwise provide for direct appeal; (3) plaintiffs and defendant-intervenors' motion to adopt Minnesota Laws 1991, Chapter 246 and proposed legislative amendments as the redistrict- ing plan; and (4) defendant-intervenors' motion to add a criterion that any court-adopted plan for redrawing state legislative districts be based on Minnesota Laws 1991, Chapter 246 and limited to changes necessary to correct defects.

Based on the arguments, the memoranda submitted, and the prior proceedings, the court concludes and orders as follows:

I.

Constitutionality of
Minnesota Laws 1991, Chapter 246

Article IV, section 2 of the Minnesota Constitution requires that representation in both the senate and house of representatives be "apportioned equally throughout the different sections of the state in proportion to the population thereof." Section 3 requires senators to be chosen "by single districts of convenient contiguous territory," with no representative district divided in the formation of a senate district.

All parties acknowledge that Minnesota Laws 1991,

Chapter 246 violates the constitutional commands of equal apportionment and contiguity. The parties disagree on whether the violations are technical or more deeply rooted. We conclude that numerous infirmities, including noncontiguous districts, invalidate Minnesota's present districting law, Minnesota Laws 1991, Chapter 246, under the Minnesota Constitution, Article IV, sections 2 and 3, and that further reapportionment is required to protect the rights of voters in this state.

We also conclude that Minnesota Laws 1991, Chapter 246 is invalid under the United States Constitution. The districting of Wayzata, Chatham Township, and New Hope, among others, violates the equality of representation requirement imposed by the fourteenth amendment to the United States Constitution. See Reynolds v. Sims, 377 U.S. 533, 84 S. Ct. 1362 (1964).

Plaintiff-intervenors have requested additional time to submit specific instances of violations of the Federal Voting Rights Act. This request was granted orally at the September 24 hearing.

II.

Motion to Stay

Plaintiff-intervenors move this court to stay its proceedings until completion of the proceedings of the United States District Court in Emison v. Growe, File No. 4-91-202 (D. Minn.). All other parties oppose this motion. Because of the length of the requested stay, the motion is essentially for dismissal. Plaintiff-intervenors have failed to demonstrate why the state should abdicate its responsibility to redistrict.

This court has a duty to hear and determine cases properly before it. This action, filed January 24, 1991, was pending when Emison v. Growe was filed. The interests represented in these two proceedings are similar but are not necessarily the same. The Hennepin County Auditor has not been permitted to intervene in

the federal suit and thus was unable to request the temporary stay of the local governments' time-restricted statutory obligation to redefine election districts, relief that this court granted in Pretrial Order No. 3. Plaintiff-intervenors have argued that violations of the Federal Voting Rights Act require federal jurisdiction, but acknowledge that their federal action does not include a claim that Chapter 246 violates that act.

The integrity of elections and the integrity of legislative apportionment are vital to this state's governance. The strong state interest in guaranteeing rights of political participation require maintaining control over reapportionment, a matter of particularly local concern. A state's judiciary, as well as its legislature, is charged with taking an active part in preserving these interests. See Scott v. Germano, 381 U.S. 407, 409, 85 S. Ct. 1525, 1527 (1965) ("The power of the judiciary of a State to require valid reapportionment or to formulate a valid redistricting plan has not only been recognized by this Court but appropriate action by the States in such cases has been specifically encouraged."); People v. Kerner, 32 Ill.2d 539, 546-49, 208 N.E.2d 561, 566-67 (1965); Kruidenier v. McCulloch, 257 Iowa 1315, 1318-19, 136 N.W.2d 546, 548 (Iowa 1965).

In addition, the Minnesota Constitution, while delegating the primary responsibility for reapportionment to the legislature, imposes various restrictions on redistricting plans, and it is the duty of state courts to ensure adherence to these constitutional mandates. See generally Minnesota State Bd. of Health v. City of Brainerd, 308 Minn. 24, 40 n. 5, 241 N.W.2d 624, 633 n. 5 (1976).

. Judicial economy and the potential duplication of proceedings are important considerations. However, our review of the cases persuades us that when state court proceedings over reapportionment have begun, those proceedings are rarely stayed and it is

the federal courts that traditionally abstain. See Scott, 381 U.S. 407, 85 S. Ct. 1525; Badham v. United States Dist. Court, 721 F.2d 1170 (9th Cir. 1983); Grivetti v. Illinois State Electoral Bd., 335 F. Supp. 779 (N.D. Ill. 1971); Mahoney v. Burkhardt, 299 F. Supp. 787 (D. N.J. 1969); Ince v. Rockefeller, 290 F. Supp. 878 (S.D. N.Y. 1968); Silver v. Jordan, 274 F. Supp. 882 (C.D. Cal. 1967); Kerner, 32 Ill.2d 539, 208 N.E.2d 561; Kruidenier, 136 N.W.2d 546; see also Bianchi v. Griffing, 393 F.2d 457 (2d Cir. 1968) (challenging county reapportionment); Board of County Comm'rs v. Hayden, 715 F. Supp. 313 (D. Kan. 1989) (challenging state census); Henson v. Atchley, 453 F. Supp. 555 (E.D. Tenn. 1978). But see Davis v. Mann, 377 U.S. 678, 84 S. Ct. 1441 (1964) (abstention not warranted when state law is unambiguous and no similar state court proceeding was pending); Ryan v. State Bd. of Elections, 661 F.2d 1130 (7th Cir. 1981) (abstention not warranted when no issues of state law are involved); Farnum v. Burns, 561 F. Supp. 83 (D. R.I. 1983) (no pending state action or ambiguous state law); Cummings v. Meskill, 341 F. Supp. 139 (D. Conn. 1972), rev. on other grounds 412 U.S. 735, 93 S. Ct. 2321 (1973); see also Licht v. Quattrocchi, 454 A.2d 1210 (R.I. 1982) (based on same facts as Farnum).

Plaintiff-intervenors have also moved to stay this proceeding to allow the legislature and governor opportunity to revise Minnesota Laws 1991, Chapter 246. There is no doubt that the legislature has the primary duty to apportion. See White v. Weiser, 412 U.S. 783, 794-95, 93 S. Ct. 2348, 2354 (1973). However, the state judiciary, as well as the state legislature, is under a duty to preserve proper and timely voting procedures to ensure the state's constitutional government.

Local officials must have adequate time to redraw ward and precinct boundaries, establish precinct polling locations,

prepare for elections and inform voters of all changes. Candidates require time to assess and communicate with their constituencies and to establish residency. Voters require time to evaluate candidates and their positions. A valid plan must be in place in time for precincts to be drawn and for precinct caucuses to be conducted on schedule. This court is proceeding with a plan and timetable that will recognize these interests and still permit the legislature an opportunity to act.

III.

Appeal of Denial of Stay

Plaintiff-intervenors request that denial of their motion to stay be certified to the supreme court or that this court authorize a direct and expedited appeal. The decision to stay a proceeding is generally left to the discretion of the trial court. See Danner v. Capehart, 41 Minn. 294, 42 N.W.2d 1062 (1889); Green Tree Acceptance, Inc. v. Midwest Fed. Sav. & Loan Ass'n, 433 N.W.2d 140 (Minn. App. 1988). The denial of a motion to stay is not expressly appealable but could presumably be certified for review as an "important" and "doubtful" question. See Minn. R. Civ. App. 103.03(h). We acknowledge the sensitivity of the federalism issue and its potential statewide impact; however, the propriety of a stay is not so doubtful as to warrant the extra delay that would result from appellate review of the issue. There will be adequate time for appeal of the final Order. Plaintiff-intervenors' motion is, therefore, denied.

IV.

Adoption of Chapter 246 as Redistricting Plan

Both plaintiffs and defendant-intervenors have moved this court to accept the committee changes to Chapter 246 and hold, essentially, that Chapter 246, as amended and with any needed

technical modifications, be adopted as Minnesota's legislative redistricting plan. At this stage in the proceedings, the parties have not had an opportunity to present full argument or evidence on the extent of the infirmities in Chapter 246 and the significance of the proposed legislative amendments. The motion to adopt Chapter 246 and proposed amendments is premature and consequently denied. An order to show cause that would provide for arguments before the court would inject an additional stage in these proceedings which would cause delay. The objectives sought by the motion, if appropriate, can be achieved under the present schedule through alternative procedural means.

V.

Proposed Additional Criterion that Court-Adopted Plan be Based on Chapter 246

The defendant-intervenors have moved for the addition of a criterion that any court-adopted legislative plan be based on Minnesota Laws 1991, Chapter 246. Case law compels us to adhere as closely as possible to the intent of the legislature, as embodied in the redistricting legislation. See White, 412 U.S. 783, 93 S. Ct. 2348. We adopt as an additional criterion that all submitted plans should be based on Minnesota Laws 1991, Chapter 246.

By adopting this criterion, we do not intend to restrict unduly the parties' right to challenge specific defects in the present redistricting plan or to recommend appropriate modifications. We decline to adopt the legislative committees' proposed corrections to Chapter 246 as criteria for the parties' plans. The parties may argue that these recommended amendments are appropriate and should be considered, but, because they were not enacted into law, we decline to accept the amendments as part of our criteria.

VI.

Summary

In summary, this court orders as follows:

1. The numerous defects, including noncontiguous districts, in Minnesota Laws 1991, Chapter 246 violate Article IV, sections 2 and 3 of the Minnesota Constitution. The current districting also violates the equality of representation requirement of the United States Constitution. A plan free from constitutional infirmities must be adopted.

2. Plaintiff-intervenors' motion to stay this proceeding is denied.

3. Plaintiff-intervenors' motion for this court to certify the propriety of a stay or, in the alternative, to authorize an expedited and direct appeal of this issue to the Minnesota Supreme Court is denied.

4. Defendant-intervenors' motion to adopt as an additional criterion that any court-adopted legislative plan be based on Minnesota Laws 1991, Chapter 246 is granted.

5. Plaintiffs' motion to enforce Minnesota Laws 1991, Chapter 246, together with amendments proposed by the legislative committees on redistricting, as the reapportionment plan for the State of Minnesota, is denied.

6. The parties' oral request for an alternative format for their proposed redistricting plan is granted. At a minimum, the submitted plans must include:

a. A map of the state showing proposed districts, as well as counties and minor civil divisions (MCD's).

b. A map of the seven-county metropolitan area showing proposed districts, as well as counties and MCD's.

c. A map of the Cities of St. Paul and Minneapolis showing city boundaries, as well as MNDot features and

annotations (highways, streets, roads, and their names).

d. Detailed maps and/or written descriptions defining the boundaries of proposed legislative districts that split a MCD along VTD (voting tally district or precinct) or tract block bounds.

e. A district population report showing the population for each district, the deviation from the standard for each district, average deviation for all districts, and total deviation for the state.

f. A district census units report showing each complete census unit (counties, MCD's, VTD's, and tract blocks) and the associated population for each proposed district.

g. A political subdivision splits report showing each county, MCD, or VTD that will lie in more than one proposed legislative district.

7. The parties' written arguments on Chapter 246 violations of the Federal Voting Rights Act must be submitted by October 7, 1991. Responses must be received by October 14, 1991.

IT IS SO ORDERED.

Dated: October 1, 1991

BY THE COURT:

Honorable Harriet Lansing
Honorable Kenneth J. Maas, Jr.
Honorable William E. Walker

STATE OF MINNESOTA

SPECIAL REDISTRICTING PANEL

C-8-91-985

Patricia Cotlow, Phillip Krass
Sharon LaComb, James Stein, and
Theodore Suss, individually and
on behalf of all Citizens of
Minnesota similarly situated,

Plaintiffs,

and

John Walker, Howard Miller,
Don Sudor, and Nkajlo Vangh,

Plaintiff-Intervenors,

vs.

PRETRIAL ORDER NO. 5

Joan Growe, Secretary of State
of Minnesota; and Patrick H.
O'Connor, Hennepin County Auditor,
individually and on behalf of all
Minnesota county chief election
officers,

Defendants,

and

The Seventy-seventh Minnesota
State House of Representatives
and the Seventy-seventh Minnesota

State Senate,

Defendant-Intervenors.

At oral argument on October 16, 1991, this panel requested that the parties reserve Thursday, November 14, 1991, for additional argument if required. To assist the panel in its review of Minnesota Laws, 1991, Chapter 246, and its development of a constitutionally sound, redistricting plan, the panel orders that a supplemental oral argument shall be held on November 14, 1991, at 1:30 p.m., in the Minnesota Judicial Center, Courtroom 200, to consider the following issues:

I.

Voting Rights Act Challenges

The parties have previously argued the applicability and justiciability of Voting Rights claims in this proceeding. The upcoming hearing is intended as a final opportunity to specify all particular challenges to Chapter 246 under the Voting Rights Act.

II.

Legislative History of Chapter 246

The parties should address the propriety of relying on legislative history to avoid, modify, or correct constitutional or other defects in Chapter 246. References have been made to various maps used in committee and presented during floor debate on Chapter 246. The panel requires information on the existence and availability of any redistricting maps and population data tables used in the legislative process before and during enactment of Chapter 246. The parties should focus on whether such maps or tables

i. constitute part of the redistricting law itself;

ii. constitute part of the law's legislative history; and

iii. whether the maps can be used, if part of the law's legislative history, only to resolve ambiguities or more generally to avoid specific findings of unconstitutionality.

All such maps and tables should be submitted to the panel at or before the hearing scheduled for November 14, 1991. The parties are encouraged to stipulate to the authenticity and appropriate use of such materials. Absent agreement, however, the court requests submission of appropriate, authenticating affidavits.

III.

Specific Problems

Through the parties various submissions and an independent review of Chapter 246, the panel has identified numerous errors in the text of the redistricting plan. Not all of these defects are of constitutional significance. The following is a partial, categorized list of problems to which the parties should respond in two ways: first, by addressing generally the scope of the court's authority to resolve each type of defect; and, second, by specifying appropriate corrections for each defect. This list is illustrative only; the parties are strongly encouraged to submit their own detailed lists of errors and recommended remedies.

A. Clarifications.

Many of the problems in Chapter 246 involve ambiguities that can be resolved by reference to the surrounding text. The panel is inclined to treat such problems as technical errors warranting clarification but not requiring particularized justification. See Silver v. Brown, 48 Cal. Rptr. 609, 409 P.2d 689 (1966); Miller v. Schaffer, 320 A.2d 1 (Conn. 1972). Examples include:

1. Senate district 51. The description of the boundary around the portion of the city of Hugo included in this district is ambiguous, but the street references are sufficiently clear that the intended boundary is discernible. A minor directional clarification would correct the problem.

2 Senate district 53. Chapter 246 erroneously refers to Otter "Tail" Road. There is no such road in the area being described; however, reference to an ordinary street map indicates that Otter Lake Road was apparently intended. The similarity in names seemingly permits minor correction.

3. Senate district 54. Atlantic Street and the railroad right-of-way described do not meet, but both are plausible boundaries, and an intersection between the two could be accomplished by implying a straight-line extension from each.

B. Noncontiguous districts.

Chapter 246 contains some defects that create noncontiguous districts, in violation of Minn. Const. Art. IV, § 3. Examples include:

1. Senate districts 53, 54 and 55. The boundary between senate districts 54 and 55 is specifically described under each, but the descriptions do not coincide. A gap consisting of the block between Atlantic Street and Chamber Street results. Any portion of the city of Maplewood not included in senate districts 54, 55, or 57 is assigned to senate district 53. Because this particular block is not connected to the rest of senate district 53, the district is not contiguous.

2. Senate district 5. Angora Township is specifically included in senate district 5, but the unorganized territories surrounding this township--Vermillion Lake, Sand Lake, and East Sand Lake--are not included in this district. By residual clause, they fall into senate district 6. Consequently, senate district 5 is

not contiguous.

3. Senate district 31. Portions of Olmstead County not included in senate districts 28 or 30 are assigned to district 31. However, some of these areas, including portions of Cascade, Rochester, and Marion Townships are surrounded by areas included in senate district 30, leaving senate district 31 noncontiguous.

The parties should propose remedies for each of these and other contiguity problems and cite the justifications for their proposals.

C. Ambiguous boundaries, unassigned areas, and other geographic problems.

Various other defects in Chapter 246 affect not only the dividing lines between districts but also the district populations and the court's ability to calculate population deviations from ideal district size. Examples include:

1. House districts 52A and 52B. The description of the portion of New Brighton to be included in this district is vague. Even assuming that the legislature intended the line described to move easterly along 16th Street Northwest, this rectangular portion of the city creates a district of minimal contiguity--house district 52A--and a large disparity in populations between the two house districts.

2. Senate district 53. This district contains numerous problems. The line surrounding the portion of Blaine to be included is ambiguous, particularly near Flowerfield Road, and does not include the section of Blaine north of Circle Pines that the legislature's proposed plan includes in this district. The "extension" of County Road H2 to the shore of Bald Eagle Lake is indeterminate. The boundary around Gervais Lake, shared by senate district 54, is unclear and appears to leave lake-shore area

unassigned.

3. Senate districts 25 and 35. The section of New Prague in Scott County is assigned to both of these districts.

The parties should address these and all other similar problems in Chapter 246 and recommend appropriate corrections with supporting rationale.

IV.

Legal Descriptions and Computer Files of Plans Submitted

The possibility that the nature and scope of the defects in Chapter 246 will invalidate the entire law, although remote, requires detailed review of each of the parties' alternative redistricting plan. Maps and tables for the alternative plans have been submitted, in general accordance with the format for submission previously established by the panel. However, to improve the panel's ability to analyze these proposals, the panel has also found it necessary to request (1) computer access to each proposed plan file; and (2) legal descriptions of both plans.

The first of these requirements has been accomplished, although the parties have not afforded similar access to each other. The parties are directed to authorize mutual access to their respective computer plan files as soon as is reasonably possible.

The legislature has previously submitted a legal description of its proposed plan. The panel requests that the plaintiff-intervenors submit a similarly detailed, legal description of their proposed plan by November 14, 1991.

IT IS SO ORDERED.

Dated: November 8, 1991

BY THE COURT:
Honorable Harriet Lansing
Honorable Kenneth J. Maas, Jr.
Honorable William E. Walker

Memorandum

In Pretrial Order No. 4, this panel concluded that, due to certain obvious defects, Minnesota Laws 1991, Chapter 246, is unconstitutional on its face. In such a case, a court's first responsibility is to determine whether the errors in the plan are so pervasive as to invalidate it entirely, requiring adoption of an alternate plan; if the plan is not uncorrectably invalid, the court must ascertain the nature and scope of each error and modify the legislature's plan to the extent necessary to correct such defects. See Upham v. Seamon, 456 U.S. 37, 40-41, 102 S. Ct. 1518, 1520-21 (1982); Cook v. Luckett, 735 F.2d 912 (5th Cir. 1984).

Detailed analysis of Chapter 246 suggests that, although the law contains numerous errors affecting a significant number of districts, the defects are not so pervasive as to abridge the overarching requirement of judicial deference to legislative policy decisions, see White v. Weiser, 412 U.S. 783, 93 S. Ct. 2348 (1973), by developing an independent alternative plan. Absent persuasive argument establishing far-reaching, uncorrectable defects in Chapter 246, this panel is obliged to affirm those portions of the law that meet constitutional and statutory requirements and to limit the scope of its remedy to those areas in which substantial defects are present. The parties are accordingly advised of the court's evaluations in order to assist them to direct their arguments to issues properly within our scope of resolution.

STATE OF MINNESOTA

SPECIAL REDISTRICTING PANEL

C8-91-985

Patricia Cotlow, Phillip Krass
Sharon LaComb, James Stein, and
Theodore Suss, individually and
on behalf of all Citizens of
Minnesota similarly situated,

Plaintiffs,

and

John Walker, Howard Miller,
Don Sudor, and Nkajlo Vangh,

Plaintiff-Intervenors,

vs.

Joan Growe, Secretary of State
of Minnesota; and Patrick H.
O'Connor, Hennepin County Auditor,
individually and on behalf of all
Minnesota county chief election
officers,

Defendants,

and

The Seventy-seventh Minnesota
State House of Representatives

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND PRELIMINARY ORDER FOR JUDGMENT ON LEGISLATIVE REDISTRICTING

and the Seventy-seventh Minnesota
State Senate,

Defendant-Intervenors.

The Special Redistricting Panel convened hearings on July 26, August 29, September 24, October 16, and November 14, 1991.

Plaintiffs were represented by Alan W. Weinblatt, Weinblatt & Davis; plaintiff-intervenors were represented by Bruce D. Willis, Popham, Haik, Schnobrich & Kaufman, Ltd.; defendant Joan Growe, Secretary of State, was represented by John R. Tunheim, Chief Deputy Attorney General, and Jocelyn Olson, Assistant Attorney General; defendant Patrick H. O'Connor, Hennepin County Auditor, was represented by Michael O. Freeman, Hennepin County Attorney, and Toni A. Beitz, Senior Assistant Hennepin County Attorney; and defendant-intervenors were represented by John D. French and Michael L. Cheever, Faegre & Benson, and Peter S. Wattson, Senate Counsel.

All parties were directed to file legislative redistricting plans on October 7, 1991. The panel convened hearings on October 16 and November 14, 1991 for comments on the plans.

Based on the record received from the Minnesota District Court, Fourth Judicial District; the record compiled during the course of the hearings; and the submissions of the parties; the panel makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. In January 1991, Patricia Cotlow, Phillip Krass, Sharon LaComb, James Stein, and Theodore Suss initiated this action in Minnesota District Court, Fourth Judicial District. They

asked the court to declare the present legislative apportionment, Minn. Stat. §§ 2.019, 2.042 through 2.702 (1990), and the present congressional apportionment, outlined in LaComb v. Growe, 541 F. Supp. 145 (D. Minn. 1982), invalid under the Minnesota and United States Constitutions.

2. The plaintiffs further requested the court to retain jurisdiction during the 1991 session of the legislature to determine whether any legislatively enacted plans for redistricting satisfied the Minnesota and United States Constitutions and the Federal Voting Rights Act. In the absence of the enactment of a constitutionally valid method of apportionment by the legislature, the plaintiffs asked this court to make a determination of a proper legislative and congressional apportionment system for the State of Minnesota.

3. On February 15, 1991, John Walker, Howard Miller, Don Sudor, and Nkajlo Vangh served notice and statement of intervention. On March 14, 1991, plaintiffs served notice of objection to the intervention.

4. On February 25, 1991, the previously named plaintiffs and defendants Joan Growe and the Hennepin County Auditor stipulated that the court had subject matter jurisdiction; that as a result of population changes reflected in the 1990 federal census, the present legislative and congressional districts contravene the Minnesota and United States Constitutions; and authorized the Chief Judge of the Hennepin County District Court to request the Chief Justice of the State of Minnesota to appoint a panel of three district court or appellate judges to hear and decide this action.

5. On April 2, 1991, the Minnesota House of Representatives and the Minnesota Senate served notice of intervention as defendants and a statement of intervention. No party objected.

6. On May 18, 1991, the legislature passed Chapter 246,

S.F. No. 1571, establishing a legislative redistricting plan. The bill was presented to the governor on May 24, 1991.

7. On June 4, 1991, the Minnesota Supreme Court appointed the undersigned three-judge panel to hear and decide all matters, including all pretrial and trial motions, and to reach an ultimate disposition of this case.

8. On June 20, 1991, the Minnesota Supreme Court declined original jurisdiction on the question of the validity of the enactment of a number of bills, including Chapter 246, the legislative redistricting bill. A declaratory judgment action was filed in Ramsey County District Court.

9. On July 26, 1991, the special redistricting panel conducted a pretrial status conference and, on July 29, 1991, issued Pretrial Order No. 1 ordering (a) that John Walker, Howard Miller, Don Sudor, and Nkajlo Vangh be permitted to intervene as plaintiff-intervenors; (b) that parties submit responses to the criteria adopted by the Minnesota Legislature for legislative and congressional redistricting plans; and (c) that arrangements be made to permit the panel to view the legislature's redistricting computer system.

10. On August 2, 1991, by order of Ramsey County District Court, Chapter 246 was declared to be a validly enacted law.

11. On August 16, 1991, the special redistricting panel issued Pretrial Order No. 2 establishing certain preliminary criteria for legislative and congressional redistricting and directing oral argument on other reserved criteria.

12. After the parties' arguments on the reserved criteria, the panel issued Pretrial Order No. 3 on September 13, 1991, adopting the final criteria for congressional and legislative redistricting. The criteria for legislative redistricting are as

follows:

1. The Senate must be composed of 67 members. The House of Representatives must be composed of 134 members.

2. Each district is entitled to elect a single member.

3. A representative district may not be divided in the formation of a Senate district.

4. The districts must be substantially equal in population. The population of a district must not deviate from the ideal by more than two percent. Because a court-ordered reapportionment plan must conform to a higher standard of population equality than a legislative reapportionment plan, de minimis deviation from the population norm will be the goal for establishing districts. See Chapman, 420 U.S. 1, 95 S. Ct. 751; Connor, 431 U.S. 407, 97 S. Ct. 1828.

5. The districts must be composed of convenient contiguous territory structured into compact units. Contiguity by water is sufficient if the water is not a serious obstacle to travel within the district.

6. The districts must be numbered in a regular series, beginning with House district 1A in the northwest corner of the state and proceeding across the state from west to east, north to south, but bypassing the seven-county metropolitan area until the southeast corner has been reached; then to the seven-county metropolitan area outside the cities of Minneapolis and St. Paul; then in Minneapolis and St. Paul.

7. The districts must not dilute the voting strength of racial or language minority populations. Where a concentration of a racial or language minority makes it possible, the districts must increase the probability that members of

the minority will be elected. Any plan adopted by the court shall comply with the applicable provisions of the Federal Voting Rights Act, 42 U.S.C. § 1971, et seq.

8. The districts will be drawn with attention to county, city and township boundaries. A county, city, or township will not be divided into more than one district except as necessary to meet equal population requirements or to form districts that are composed of convenient, contiguous and compact territory. When any county, city or township must be divided into one or more districts, it will be divided into as few districts as practicable. Reynolds v. Sims, 377 U.S. 533, 578-79, 84 S. Ct. 1362, 1390-91 (1964); Swann v. Adams, 385 U.S. 440, 444, 87 S. Ct. 569, 572 (1967).

9. The districts should attempt to preserve communities of interest when that can be done in compliance with the preceding standards. The panel may recognize a community's character as urban, suburban or rural. See Skolnick v. State Electoral Bd. of Ill., 336 F. Supp. 839 (N.D. Ill. 1971); Lacomb v. Growe, 541 F. Supp. 145 (D. Minn. 1982); LaComb v. Growe, 541 F. Supp. 160 (D. Minn. 1982); Maryland Citizens Comm. for Fair Congressional Redistricting, Inc. v. Tawes, 253 F. Supp. 731 (D. Md. 1966), aff'd sub. nom. Alton v. Tawes, 384 U.S. 315, 86 S. Ct. 1590 (1966). Additional communities of interest shall be considered if persuasively established and not in violation of applicable case law.

10. Past voting behavior and residency of incumbents shall not be used as criteria; however, they may be used to evaluate the fairness of plans submitted to the court.

13. Subsequently, the panel adopted an additional criterion that all submitted plans should be based on Chapter 246. Defendant-intervenors, joined by other parties, urged the panel to adopt, as a criterion, certain "curative amendments" to Chapter 246. The amendments had passed out of the special redistricting committees of both houses on August 26, 1991, after the legislature had adjourned. However, the amendments had not been passed by the full bodies of either house, nor had they been presented to the governor for his signature. The panel declined to adopt as a criterion the legislative committees' proposed corrections to Chapter 246.

14. The August 29, 1991 Pretrial Order No. 3 also ordered suspension, until further order of the panel, of the time periods within which local units of government are required to complete the redefining of the boundaries of election precincts, wards, or other local election districts pursuant to Minn. Stat. Ann. §§ 204B.135, 204B.14, 205.84, 205A.12, and 375.02 (West Supp. 1991). The pretrial order designated the format for submission of redistricting plans and directed oral argument on various motions, including whether Chapter 246 violates the Minnesota or United States Constitutions or the Federal Voting Rights Act. Finally, recognizing that the time requirements for congressional redistricting are less stringent, the panel deferred submission of congressional redistricting plans.

15. Following submissions from the parties, the panel issued Pretrial Order No. 4, on October 1, 1991, which (a) denied plaintiff-intervenors' motion to stay this proceeding; (b) declared that the numerous facial infirmities in Chapter 246, including noncontiguous districts, violate Article IV,

sections 2 and 3 of the Minnesota Constitution; and (c) declared that facial infirmities also violate the equality of representation requirement of the fourteenth amendment to the United States Constitution. The panel denied plaintiff's motion to enforce Chapter 246, together with its "curative amendments", as the reapportionment plan for the State of Minnesota. Because no party submitted specific allegations of Voting Rights Act violations, the panel ordered submission of any Chapter 246 violations of the Federal Voting Rights Act without waiver of jurisdictional objections by October 7, 1991.

16. On October 7, 1991, defendant-intervenors the Minnesota Legislature renewed its submission of Chapter 246 together with the curative amendments adopted by the Senate and House committees on Redistricting; plaintiffs proposed adoption of the legislature's plan, with curative amendments, as the court-ordered legislative redistricting plan; defendant Secretary of State Growe supported the submission of the legislature; defendant Hennepin County Auditor supported the submission of the legislature; plaintiff-intervenors submitted a proposed legislative redistricting plan. The panel received additional submissions, not part of the record, from citizens groups and individual legislators.

17. No violations of the Federal Voting Rights Act were asserted.

18. On October 15, 1991, defendant-intervenors the Minnesota Legislature submitted a written response to the plaintiff-intervenors' proposed legislative redistricting plan. On October 16 (a) defendant Growe submitted a written response to plaintiff-intervenors' proposed legislative

redistricting plan; (b) plaintiff-intervenors submitted a written response to the legislature's redistricting plan; and (c) defendant Hennepin County Auditor submitted a written analysis of the plaintiff-intervenors' plan. On October 17 and 18, 1991, defendant-intervenor the Minnesota Legislature submitted additional responses to the plaintiff-intervenors' redistricting plan.

19. On November 4, 1991, defendant-intervenor the Minnesota Legislature submitted a congressional redistricting plan. The plan is based on S.F. No. 1597/H.F. No. 1728, adopted by the House of Representatives Committee on Redistricting and the Senate Committee on Redistricting on October 30 and 31, 1991, and referred to the full House and Senate for consideration in early January, 1992.

20. On November 8, 1991, the panel issued Pretrial Order No. 5 ordering final oral argument on (a) the existence and use of any legislative history of Chapter 246, including maps, and (b) the application of the rules of statutory interpretation to avoid, modify, or correct constitutional or other defects in Chapter 246. In addition, the panel ordered that all parties have computer access to each proposed plan file and written geographic description of both plans.

21. On November 14, 1991, defendant-intervenors the Minnesota Legislature submitted a memorandum on Chapter 246's legislative history, appending affidavits of State Representative Peter Rodosovich, State Senator Lawrence J. Pogemiller, and Craig Lindeke from the Revisor of Statutes Office. The panel has adopted the following as relevant pieces of legislative history:

a. A set of two small black and white maps, one of

the state and one of the metropolitan area. These maps were distributed to each member of the House in the House chamber on May 18, 1991, before the members voted on Chapter 246. These two maps were also distributed to each member of the Senate in the Senate chambers on May 16, 1991, before the members voted on Chapter 246. In each instance, the chief authors of the bill represented that the proposed redistricting plan was depicted in the two black and white maps.

b. A second map group consisting of four large color maps depicting respectively the areas of (1) the State of Minnesota, (2) the seven-county metropolitan area, (3) the City of Minneapolis, and (4) the City of St. Paul. The maps were used in both the House and Senate committees and displayed in the House retiring room on May 17, 1991, the House chamber on May 18, 1991, the Senate retiring room on May 16, 1991, and in the Senate chamber on May 16, 1991.

c. A group of seven reports, primarily population tables. Three of the reports were distributed to members of the House on May 18, 1991, before they voted on Chapter 246. Three of the reports were distributed to all members of the Senate on May 18, 1991, before they voted on Chapter 246. The remaining report was distributed to the members of the Senate Redistricting Committee on May 3, 1991.

CONCLUSIONS OF LAW

1. Minnesota Laws 1991, Chapter 246, violates Article IV, sections 2 and 3 of the Minnesota Constitution because, among other defects, it creates noncontiguous districts.

2. Minnesota Laws 1991, Chapter 246 violates the equality of

representation requirement of the fourteenth amendment of the United States Constitution.

3. Unless a legislative plan is incorrectably invalid, a court may not simply substitute its own reapportionment preferences for those of the state legislature. See Upham v. Seamon, 456 U.S. 37, 40-42, 102 S. Ct. 1518, 1520-21 (1982). Courts are not permitted to disregard state apportionment policy or plans without solid constitutional grounds for doing so. White v. Weiser, 412 U.S. 783, 795, 93 S. Ct. 2348, 2355 (1973) (citing Whitcomb v. Chavis, 403 U.S. 124, 160, 91 S. Ct. 1858, 1878 (1971)). The court must reconcile constitutional requirements with the goals of state political policy by limiting its modifications "to those necessary to cure any constitutional or statutory defect." Upham 456 at 43, 102 S. Ct. at 1522; see also Rybicki v. State Bd. of Elections, 574 F. Supp. 1082 (N.D. Ill. 1982) (making only those corrections necessary to remove unconstitutional defects). Such deference does not extend to the curative amendments, as they have not been adopted into law.

4. Most of the constitutional and statutory defects in Minnesota Laws 1991, Chapter 246 can be cured by ascertaining and effectuating the legislative intent see Minn. Stat. § 645.16 (1990); and by applying canons of statutory construction, Minn. Stat. §§ 645.16 through 645.43 (1990). The remaining defects require corrections and adjustments which are based on legislative policy and the adopted legislative redistricting criteria. These corrections and adjustments are made in the attached plan and explained in the annotations that will accompany the final redistricting order.

5. Minnesota Laws 1991, Chapter 246 contains no Federal Voting Rights Act violation.

BASED ON THE ENTIRE RECORD,
IT IS HEREBY ORDERED:

1. That the following reapportionment of the Minnesota Legislature, subject to amendments after the final December 3, 1991 hearing, shall be effective for the 1992 primary and general elections unless a constitutional plan is enacted by the State of Minnesota before January 21, 1992.

2. Elections conducted after January 1, 1993 shall be according to this plan or any constitutional plan adopted after this date by the State of Minnesota.

3. Submission of plans for congressional redistricting is deferred until further order of this court.

4. Subject to reconsideration following December 3 oral arguments, the stay of time periods for completion of redistricting for local units of government is dissolved on the date of the final order.

5. The panel retains jurisdiction over this matter to ensure that any bill enacted into law complies with the Minnesota and United States Constitutions and the Federal Voting Rights Act.

Dated: November 21, 1991 BY THE COURT:

/S/
Honorable Harriet Lansing

/S/
Honorable Kenneth J. Maas

/S/
Honorable William E. Walker

Memorandum

The Minnesota Constitution places the power and responsibility of redistricting with the legislature and the governor. Minn. Const., art. IV, §§ 3, 24. In the last 78 years, however, Minnesota's redistricting rule has become its exception. Only once during this time have the legislature and the governor been able to pass a redistricting plan. Consequently, the redistricting courts have been compelled to assume a more legislative role to adjust for the detrimental lack of a "current expression of the state's political preferences regarding the complicated redistricting process." LaComb v. Growe, 541 F. Supp. 145, 150-51 (D. Minn. 1982).

Following the 1990 federal census, the 1991 Minnesota House and Senate were able to pass Chapter 246, S.F. No. 1569, prescribing the boundaries of Minnesota's legislative districts. This bill was subsequently determined to be validly enacted law. The United States Supreme Court has consistently declared that when a state has enacted a redistricting plan, courts may not pre-empt the redistricting responsibility or intrude on state policy unless necessary to correct an unconstitutional plan.

A court's first responsibility is to determine whether any errors in an enacted plan are so pervasive as to invalidate it entirely, requiring adoption of an alternate plan. If the plan is not incorrectably invalid, the court must ascertain the nature and scope of each error and modify the legislative plan to the extent necessary to correct such defects.

Our detailed analysis of Chapter 246 demonstrates that there are numerous errors in Chapter 246 as enacted. The legislature's curative amendments propose approximately 160 changes in 65 pages of text. Some of the proposed amendments clarify wording and are only refinements in language which are not necessary to discern the boundaries of districts. Other proposed changes,

however, point to substantive errors requiring changes to correct defects in the statute.

In addressing the needed substantive changes, some corrections are obvious, and there is no need to employ the rules of statutory construction or to refer to legislative history. In other instances, the errors can be rectified by reference to the context of the language, the geographic context of the district or by referring to the maps or tables which form part of the legislative history. In the remaining instances where corrections and adjustments are required and legislative intent does not provide direction, we have drawn the boundaries by attempting to preserve surrounding constitutional boundaries, and by examining the submissions of the parties and weighing these and other alternatives against our adopted criteria. In no instance have we found the problems to be so incorrectable that the basic plan must be abandoned.

Plaintiff-intervenors have urged acceptance of a substantially different plan with better numerical balance. We recognize that the primary objective of redistricting is to achieve population equality in all state districts. Courts have, however, uniformly recognized that population deviations of ten percent or less in legislative plans do not affect the plan's constitutionality. The limited population deviations in the corrected Chapter 246 are in almost all instances well within the stated two percent goal. To accept an alternative plan with slightly lower population deviations over an enacted legislative plan would require us to disregard an entire body of established redistricting case law.

Plaintiffs have requested that we also establish boundaries for congressional districts. Although we have established criteria for a congressional redistricting plan, we have deferred action until the legislature and the governor have an opportunity to enact a constitutional plan. One plan has been reported out of the

committees and the legislature is scheduled to meet from January 6 through January 17, 1992, to consider the issue.

The reasons to proceed in reviewing the legislative redistricting plan have been fully addressed in our preceding orders. In keeping with the parties' requests, we are attempting to have final reapportionment in place in advance of the February precinct caucuses and to provide some certainty to local units of government who are anxious to begin their own redistricting process. We accept the principle established in Scott v. Germano, 381 U.S. 407, 409, 85 S. Ct. 1525, 1527 (1965), that state courts have a primary obligation to review redistricting issues. By proceeding as swiftly as possible, we intend to provide any time necessary for an orderly appeal process and to avoid any duplicative litigation in the federal courts. Finally, our extended analysis of Chapter 246 has left us with an enduring realization that drawing accurate and verifiable legislative boundaries for Minnesota's 201 districts is a complex and time consuming operation. In the interest of specificity and exactness, we want to provide sufficient time to examine and exclude any technical errors. Permitting the parties to examine the preliminary legislative redistricting and identify any errors before the final December 3, 1991 hearing and adoption should aid in this process.

STATE OF MINNESOTA

SPECIAL REDISTRICTING PANEL

C8-91-985

Patricia Cotlow, Phillip Krass
Sharon LaComb, James Stein, and
Theodore Suss, individually and
on behalf of all Citizens of
Minnesota similarly situated,

Plaintiffs,

and

John Walker, Howard Miller,
Don Sudor, and Nkajlo Vangh,

Plaintiff-Intervenors,

vs.

Joan Growe, Secretary of State
of Minnesota; and Patrick H.
O'Connor, Hennepin County Auditor,
individually and on behalf of all
Minnesota county chief election
officers,

Defendants,

and

The Seventy-seventh Minnesota
State House of Representatives
and the Seventy-seventh Minnesota

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER FOR JUDGMENT ON LEGISLATIVE REDISTRICTING

State Senate,

Defendant-Intervenors.

The Special Redistricting Panel convened hearings on July 26, August 29, September 24, October 16, November 14, and December 3, 1991.

Plaintiffs were represented by Alan W. Weinblatt, Weinblatt & Davis; plaintiff-intervenors were represented by Bruce D. Willis and Mark B. Peterson, Popham, Haik, Schnobrich & Kaufman, Ltd.; defendant Joan Growe, Secretary of State, was represented by John R. Tunheim, Chief Deputy Attorney General, and Jocelyn Olson, Assistant Attorney General; defendant Patrick H. O'Connor, Hennepin County Auditor, was represented by Michael O. Freeman, Hennepin County Attorney, and Toni A. Beitz, Senior Assistant Hennepin County Attorney; and defendant-intervenors were represented by John D. French and Michael L. Cheever, Faegre & Benson, and Peter S. Wattson, Senate Counsel.

All parties were directed to file legislative redistricting plans on October 7, 1991. The panel convened hearings on October 16, November 14, and December 3, 1991 for comments on the plans.

Based on the record received from the Minnesota District Court, Fourth Judicial District; the record compiled during the course of the hearings; and the submissions of the parties; the panel makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. In January 1991, Patricia Cotlow, Phillip Krass, Sharon LaComb, James Stein, and Theodore Suss initiated this

action in Minnesota District Court, Fourth Judicial District. They asked the court to declare the present legislative apportionment, Minn. Stat. §§ 2.019, 2.042 through 2.702 (1990), and the present congressional apportionment, outlined in LaComb v. Growe, 541 F. Supp. 145 (D. Minn. 1982), invalid under the Minnesota and United States Constitutions.

2. The plaintiffs further requested the court to retain jurisdiction during the 1991 session of the legislature to determine whether any legislatively enacted plans for redistricting satisfied the Minnesota and United States Constitutions. In the absence of the enactment of a constitutionally valid apportionment by the legislature, the plaintiffs asked this court to devise a proper legislative and congressional apportionment for the State of Minnesota.

3. On February 15, 1991, John Walker, Howard Miller, Don Sudor, and Nkajlo Vangh served notice and statement of intervention. On March 14, 1991, plaintiffs served notice of objection to the intervention.

4. On February 25, 1991, the previously named plaintiffs and defendants Joan Growe and the Hennepin County Auditor stipulated that the court had subject matter jurisdiction; that as a result of population changes reflected in the 1990 federal census, the present legislative and congressional districts contravene the Minnesota and United States Constitutions; and that the Chief Judge of the Hennepin County District Court could request the Chief Justice of the State of Minnesota to appoint a panel of three district court or appellate judges to hear and decide this action.

5. On April 2, 1991, the Minnesota House of Representatives and the Minnesota Senate served notice of intervention as defendants and a statement of intervention. No party objected.

6. On May 18, 1991, the legislature passed Chapter 246,

S.F. No. 1571, establishing a legislative redistricting plan. The bill was presented to the governor on May 24, 1991.

7. On June 4, 1991, the Minnesota Supreme Court appointed the undersigned three-judge panel to hear and decide all matters, including all pretrial and trial motions, and to reach an ultimate disposition of this case.

8. On June 20, 1991, the Minnesota Supreme Court declined original jurisdiction on the question of the validity of the enactment of a number of bills, including Chapter 246, the legislative redistricting bill. A declaratory judgment action was filed in Ramsey County District Court.

9. On July 26, 1991, the special redistricting panel conducted a pretrial status conference and, on July 29, 1991, issued Pretrial Order No. 1 ordering (a) that John Walker, Howard Miller, Don Sudor, and Nkajlo Vangh be permitted to intervene as plaintiff-intervenors; (b) that parties submit responses to the criteria adopted by the Minnesota Legislature for legislative and congressional redistricting plans; and (c) that arrangements be made to permit the panel to view the legislature's redistricting computer system.

10. On August 2, 1991, by order of Ramsey County District Court, Chapter 246 was declared to be a validly enacted law.

11. On August 16, 1991, the special redistricting panel issued Pretrial Order No. 2 establishing certain preliminary criteria for legislative and congressional redistricting and directing oral argument on other reserved criteria.

12. After the parties' arguments on the reserved criteria, the panel issued Pretrial Order No. 3 on September 13, 1991, adopting the final criteria for congressional and legislative redistricting. The criteria for legislative redistricting are as

follows:

1. The Senate must be composed of 67 members. The House of Representatives must be composed of 134 members.

2. Each district is entitled to elect a single member.

3. A representative district may not be divided in the formation of a Senate district.

4. The districts must be substantially equal in population. The population of a district must not deviate from the ideal by more than two percent. Because a court-ordered reapportionment plan must conform to a higher standard of population equality than a legislative reapportionment plan, de minimis deviation from the population norm will be the goal for establishing districts. See Chapman, 420 U.S. 1, 95 S. Ct. 751; Connor, 431 U.S. 407, 97 S. Ct. 1828.

5. The districts must be composed of convenient contiguous territory structured into compact units. Contiguity by water is sufficient if the water is not a serious obstacle to travel within the district.

6. The districts must be numbered in a regular series, beginning with House district 1A in the northwest corner of the state and proceeding across the state from west to east, north to south, but bypassing the seven-county metropolitan area until the southeast corner has been reached; then to the seven-county metropolitan area outside the cities of Minneapolis and St. Paul; then in Minneapolis and St. Paul.

7. The districts must not dilute the voting strength of racial or language minority populations. Where a concentration of a racial or language minority makes it possible, the districts must increase the probability that members of

the minority will be elected. Any plan adopted by the court shall comply with the applicable provisions of the Federal Voting Rights Act, 42 U.S.C. § 1971, et seq.

8. The districts will be drawn with attention to county, city and township boundaries. A county, city, or township will not be divided into more than one district except as necessary to meet equal population requirements or to form districts that are composed of convenient, contiguous and compact territory. When any county, city or township must be divided into one or more districts, it will be divided into as few districts as practicable. Reynolds v. Sims, 377 U.S. 533, 578-79, 84 S. Ct. 1362, 1390-91 (1964); Swann v. Adams, 385 U.S. 440, 444, 87 S. Ct. 569, 572 (1967).

9. The districts should attempt to preserve communities of interest when that can be done in compliance with the preceding standards. The panel may recognize a community's character as urban, suburban or rural. See Skolnick v. State Electoral Bd. of Ill., 336 F. Supp. 839 (N.D. Ill. 1971); LaComb v. Growe, 541 F. Supp. 145 (D. Minn. 1982); LaComb v. Growe, 541 F. Supp. 160 (D. Minn. 1982); Maryland Citizens Comm. for Fair Congressional Redistricting, Inc. v. Tawes, 253 F. Supp. 731 (D. Md. 1966), aff'd sub. nom. Alton v. Tawes, 384 U.S. 315, 86 S. Ct. 1590 (1966). Additional communities of interest shall be considered if persuasively established and not in violation of applicable case law.

10. Past voting behavior and residency of incumbents shall not be used as criteria; however, they may be used to evaluate the fairness of plans submitted to the court.

13. Subsequently, the panel adopted an additional criterion

that all submitted plans should be based on Chapter 246. Defendant-intervenors, joined by other parties, urged the panel to adopt, as a criterion, certain "curative amendments" to Chapter 246. The amendments had passed out of the special redistricting committees of both houses on August 26, 1991, after the legislature had adjourned. However, the amendments had not been passed by the full bodies of either house, nor had they been presented to the governor for his signature. The panel declined to adopt as a criterion the legislative committees' proposed corrections to Chapter 246.

14. The August 29, 1991 Pretrial Order No. 3 also ordered suspension, until further order of the panel, of the time periods within which local units of government are required to complete the redefining of the boundaries of election precincts, wards, or other local election districts pursuant to Minn. Stat. §§ 204B.135, 204B.14, 205.84, 205A.12, and 375.02 (Supp. 1991). The pretrial order designated the format for submission of redistricting plans and directed oral argument on various motions, including whether Chapter 246 violates the Minnesota or United States Constitutions or the Federal Voting Rights Act. Finally, recognizing that the time requirements for congressional redistricting are less stringent, the panel deferred submission of congressional redistricting plans.

15. Following submissions from the parties, the panel issued Pretrial Order No. 4, on October 1, 1991, which (a) denied plaintiff-intervenors' motion to stay this proceeding; (b) declared that the numerous facial infirmities in Chapter 246, including noncontiguous districts, violate Article IV, sections 2 and 3 of the Minnesota Constitution; and (c) declared that facial infirmities also violate the equality of representation requirement of the fourteenth amendment to the United States Constitution. The panel denied plaintiff's motion to enforce Chapter 246, together with its

"curative amendments", as the reapportionment plan for the State of Minnesota. Because no party submitted specific allegations of Voting Rights Act violations, the panel ordered submission of any Chapter 246 violations of the Federal Voting Rights Act without waiver of jurisdictional objections by October 7, 1991.

16. On October 7, 1991, defendant-intervenors, the Minnesota Legislature, renewed its submission of Chapter 246 together with the curative amendments adopted by the Senate and House Committees on Redistricting; plaintiffs proposed adoption of the legislature's plan, with curative amendments, as the court-ordered legislative redistricting plan; defendant Secretary of State Growe supported the submission of the legislature; defendant Hennepin County Auditor supported the submission of the legislature; and plaintiff-intervenors submitted a proposed legislative redistricting plan. The panel received additional submissions from citizens groups and individual legislators, only one of which was made part of the record.

17. No violations of the Federal Voting Rights Act were asserted.

18. On October 15, 1991 defendant-intervenors submitted a written response to the plaintiff-intervenors' proposed legislative redistricting plan. On October 16, defendant Growe submitted a written response to plaintiff-intervenors' proposed legislative redistricting plan; plaintiff-intervenors submitted a written response to the legislature's redistricting plan; and defendant Hennepin County Auditor submitted a written analysis of the plaintiff-intervenors' plan. On October 17 and 18, 1991, defendant-intervenors submitted additional responses to the plaintiff-intervenors' redistricting plan.

19. On November 4, 1991, defendant-intervenors submitted a congressional redistricting plan. The plan is based on S.F.

No. 1597/H.F. No. 1728, adopted by the House of Representatives Committee on Redistricting and the Senate Committee on Redistricting on October 30 and 31, 1991, and referred to the full House and Senate for consideration in early January, 1992.

20. On November 8, 1991, the panel issued Pretrial Order No. 5 ordering final oral argument on (a) the existence and use of any legislative history of Chapter 246, including maps, and (b) the application of the rules of statutory interpretation to avoid, modify, or correct constitutional or other defects in Chapter 246. In addition, the panel ordered that all parties have computer access to each proposed plan file and written geographic description of both plans.

21. On November 14, 1991, defendant-intervenors submitted a memorandum on Chapter 246's legislative history, appending affidavits of State Representative Peter Rodosovich, State Senator Lawrence J. Pogemiller, and Craig Lindeke from the Revisor of Statutes Office. The panel has adopted the following as relevant pieces of legislative history:

a. A set of two small black and white maps, one of the state and one of the metropolitan area. These maps were distributed to each member of the House in the House chamber on May 18, 1991, before the members voted on Chapter 246. These two maps were also distributed to each member of the Senate in the Senate chambers on May 16, 1991, before the members voted on Chapter 246. In each instance, the chief authors of the bill represented that the proposed redistricting plan was depicted in the two black and white maps.

b. A second map group consisting of four large color maps depicting respectively the areas of (1) the State of Minnesota, (2) the seven-county metropolitan area, (3) the

City of Minneapolis, and (4) the City of St. Paul. The maps were used in both the House and Senate committees and displayed in the House retiring room on May 17, 1991, the House chamber on May 18, 1991, the Senate retiring room on May 16, 1991, and in the Senate chamber on May 16, 1991.

c. A group of seven reports, primarily population tables. Three of the reports were distributed to members of the House on May 18, 1991, before they voted on Chapter 246. Three of the reports were distributed to all members of the Senate on May 18, 1991, before they voted on Chapter 246. The remaining report was distributed to the members of the Senate Redistricting Committee on May 3, 1991.

CONCLUSIONS OF LAW

1. Minnesota Laws 1991, Chapter 246, violates Article IV, sections 2 and 3 of the Minnesota Constitution because, among other defects, it creates noncontiguous districts.

2. Minnesota Laws 1991, Chapter 246, violates the equality of representation requirement of the fourteenth amendment of the United States Constitution.

3. Unless a legislative plan is incorrectably invalid, a court may not simply substitute its own reapportionment preferences for those of the state legislature. See Upham v. Seamon, 456 U.S. 37, 40-42, 102 S. Ct. 1518, 1520-21 (1982). Courts are not permitted to disregard state apportionment policy or plans without solid constitutional grounds for doing so. White v. Weiser, 412 U.S. 783, 795, 93 S. Ct. 2348, 2355 (1973) (citing Whitcomb v. Chavis, 403 U.S. 124, 160, 91 S. Ct. 1858, 1878 (1971)). The court must reconcile constitutional requirements with the goals of state political policy by limiting its modifications "to those

necessary to cure any constitutional or statutory defect." Upham 456 at 43, 102 S. Ct. at 1522; see also Rybicki v. State Bd. of Elections, 574 F. Supp. 1082 (N.D. Ill. 1982) (making only those corrections necessary to remove unconstitutional defects). Such deference does not extend to the curative amendments, as they have not been adopted into law.

4. Most of the constitutional and statutory defects in Minnesota Laws 1991, Chapter 246 can be cured by ascertaining and effectuating the legislative intent, see Minn. Stat. § 645.16 (Supp. 1991); and by applying canons of statutory construction, Minn. Stat. §§ 645.16-645.43 (Supp. 1991). The remaining defects require corrections and adjustments which are based on legislative policy and the court's redistricting criteria. These corrections and adjustments are made in the attached plan and explained in the accompanying annotations.

5. Minnesota Laws 1991, Chapter 246 complies with the Federal Voting Rights Act.

BASED ON THE ENTIRE RECORD,
IT IS HEREBY ORDERED:

1. That subject to the stay issued by the United States District Court in Emison v. Growe, No. 4-91-202 (D. Minn. Dec. 5, 1991), and in conformity with Minn. R. Civ. P. 54.02 the following reapportionment of the Minnesota Legislature shall be final and effective beginning with the 1992 primary and general elections, unless a constitutional plan is enacted by the State of Minnesota. The stay of time periods for completion of redistricting for local units of government is dissolved.

2. Subject to the stay issued by the United States District Court in Emison v. Growe, No. 4-91-202 (D. Minn. Dec. 5, 1991),

all plans for congressional redistricting shall be submitted to this panel on or before January 17, 1992.

3. The panel retains jurisdiction over this matter to ensure that any bill enacted into law complies with the Minnesota and United States Constitutions and the Federal Voting Rights Act.

Dated: December 9, 1991 **BY THE COURT:**

/s/
Honorable Harriet Lansing

/s/
Honorable Kenneth J. Maas

/s/
Honorable William E. Walker

Memorandum

The Minnesota Constitution places the power and responsibility of redistricting with the legislature and the governor. Minn. Const., art. IV, §§ 3, 24. In the last 78 years, however, Minnesota's redistricting rule has become its exception. Only once during this time have the legislature and the governor been able to pass a redistricting plan. Consequently, courts have been compelled to assume a more legislative role to adjust for the detrimental lack of a "current expression of the state's political preferences regarding the complicated redistricting process." LaComb v. Growe, 541 F. Supp. 145, 150-51 (D. Minn. 1982).

Following the 1990 federal census, the 1991 Minnesota

House and Senate were able to pass Chapter 246, S.F. No. 1571, prescribing the boundaries of Minnesota's legislative districts. This bill was subsequently determined to be validly enacted law. The United States Supreme Court has consistently declared that when a state has enacted a redistricting plan, courts may not pre-empt the legislature's redistricting responsibility or unnecessarily intrude on state policy except as necessary to correct an unconstitutional plan. See Upham v. Seamon, 456 U.S. 37, 102 S. Ct. 1518 (1982); White v. Weiser, 412 U.S. 783, 93 S. Ct. 2348 (1973).

A court's first responsibility is to determine whether any errors in an enacted plan are so pervasive as to invalidate it entirely, requiring adoption of an alternate plan. See e.g., Cook v. Luckett, 735 F.2d 912, 918 (5th Cir. 1984) (citing Upham and Weiser). If the plan is not incorrectably invalid, the court must ascertain the nature and scope of each error and modify the legislative plan to the extent necessary to correct such defects. Upham at 41-3, 102 S. Ct. at 1521-22; Cook, 735 F.2d at 918.

Our detailed analysis of Chapter 246 reveals numerous errors in Chapter 246 as enacted. The legislature's curative amendments propose approximately 160 changes in 63 pages of text. Some of the proposed amendments clarify wording and are only refinements in language which are not necessary to discern the boundaries or contents of districts. Other proposed changes, however, point to substantive errors requiring changes to correct defects in the statute.

In addressing the needed substantive changes, some corrections were obvious, and there was no need to employ the rules of statutory construction or to refer to legislative history. In other instances, the errors could be rectified by reference to the context of the language, the geographic context of the district, or by referring to the maps or tables which form part of the legislative

history. See Minn. Stat. §§ 645.16, 645.17. In the remaining instances where corrections and adjustments were required and legislative intent was not clear, we drew the boundaries by attempting to preserve surrounding constitutional boundaries and by examining the submissions of the parties and weighing these and other alternatives against our adopted criteria. In no instance have we found the problems to be so incorrectable that the basic plan had to be abandoned.

Plaintiff-intervenors have urged acceptance of a substantially different plan with a lower average deviation. We recognize that the primary objective of redistricting is to achieve population equality in all state districts. Courts have, however, uniformly recognized that population deviations of ten percent or less in legislative plans do not affect the plan's constitutionality. See Connor v. Finch, 431 U.S. 407, 418, 97 S. Ct. 1828, 1835 (1977). The limited population deviations in the corrected Chapter 246 are in almost all instances well within two percent. To accept an alternative plan with slightly lower population deviations over an enacted legislative plan would require us to disregard an entire body of established redistricting case law.

Following the issuance of our Findings of Fact, Conclusions of Law and Preliminary Order for Legislative Redistricting, the federal district court in Emison v. Growe, No. 4-91-202, at 15 (D. Minn. Dec. 5, 1991), ordered a stay of "any future orders that [the Minnesota Special Redistricting Panel] may issue relating to the adoption of any state redistricting plan or congressional redistricting plan...until further order of [the district] court." All parties involved in the federal and state proceedings have been enjoined from enforcing or implementing any order of this court that proposes adoption of a reapportionment plan. The stay was purportedly issued in aid of federal jurisdiction and to avoid

inhibiting the legislative process before the legislature acts.

From the outset of the litigation in this court, we have proceeded with the understanding that redistricting is essentially a legislative function, and courts should not intrude in that function unless upon proper request and until the legislature has had the opportunity to reapportion. The Minnesota Legislature has acted on state legislative redistricting. It retains the power to amend the act at any time. However, the present act has been declared a valid law; it is the constitutionality of that law that has been challenged in this court.

All of the parties in this action, except the plaintiff-intervenors, have urged this court to proceed as expeditiously as possible to review the legislature's redistricting law and to take steps necessary to ensure that a valid legislative redistricting is in effect for February's precinct caucuses. The plaintiff-intervenors' counterparts in the federal action have repeatedly represented to the federal panel that the legislature's adjournment until 1992 "requires that a court conduct redistricting" and that "neither the federal nor the state court can properly defer to the legislature" because "the clock ticks toward the 1992 election process." See Plaintiff's Memorandum in Opposition to Motions for Federal Court to Abstain or Stay, at 2, 12 (August 9, 1991); Plaintiff's Reply Memorandum in Support of Motion to Stay Separate State Court Proceedings, at 6 (August 16, 1991). The federal court itself acknowledges that this litigation has reached "the eleventh hour." Emison v. Growe, No. 4-91-202, at 14 (D. Minn. Dec. 5, 1991).

The legislature has represented that its work on legislative redistricting in January 1992, will likely be limited to an attempt to pass the technical corrections bill that constituted its plan proposal to this court. In view of the governor's affidavit filed in Emison v. Growe, stating an intent to veto such a bill, and given

the time constraints posed by the upcoming caucuses, we have perceived a clear obligation to complete our review process. Our intent has been to approve a valid redistricting plan that could take effect in time for precinct caucuses, while leaving ample time for appeal, if any. Although the effective date of our order is subject to the federal court's stay, legislative redistricting is now complete and ready to be implemented absent an alternative enactment by the state and subject to whatever review is deemed necessary.

Establishing boundaries for congressional districts presents different issues because the legislature and the governor have not acted. As we stated in our November 21, 1991 order, we do not intend to proceed until they have had an opportunity to act. One plan has been reported out of the redistricting committees, and the legislature is scheduled to meet from January 6 through January 17, 1992, to consider congressional redistricting. The federal court's statement in its December 5 order (p. 7, footnote 6) that we have indicated we would issue a congressional redistricting plan by the end of December is simply wrong, without any basis and contrary to the language of our previous orders. See Cotlow v. Growe, No. C8-91-985 (Minn. Sp. Redistricting Panel Sept. 13, 1991) (setting state legislative redistricting schedule); Cotlow v. Growe, No. C8-91-985, at 7 (Minn. Sp. Redistricting Panel Nov. 21, 1991) (emphasizing deferral of congressional redistricting plans submission). We have not until today even scheduled a date for submission of congressional plans. Formal action on such a plan awaits resolution of the legislative process and further order from the federal court.

Legislative Redistricting

In making the following changes to boundaries of legislative districts, we have retained the legislative format to facilitate comparison with the original text. Additions to Chapter 246 have been underscored. Annotations are provided after the district descriptions in which corrections or changes have been made. In some districts in which proposed changes were rejected, annotations explain the reason for the rejection.

In interpreting the redistricting statute, various published maps and geographic data sources have been consulted. No particular preferences were given to any sources other than the official state highway map. We used the census bureau's TIGER files and data system to compare the original census block data to the language of Chapter 246, the parties' proposals, and our own changes. Where the boundaries of Chapter 246 split populated census blocks, we modified the districts to the extent necessary to preserve the census blocks.

When required changes affected district populations, we endeavored to minimize the deviations from the ideal. In general, rather than exacerbating the deviation in one district while attempting to minimize the deviation in another, we tried to equalize the districts' deviations while bringing them as close to the ideal as possible. Tables listing house and senate district populations and deviations and minority group populations have been appended as Exhibits A, B, C, and D. A tape of the electronic plan file will be made and placed on file.

Sec. 2. {2.043} FIRST DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 1 consists of all of Kittson, Lake of the Woods, Marshall, Pennington, Red Lake, and Roseau Counties, and that portion of Polk

County consisting of Angus Township, Belgium Township, Brandt Township, Brislet Township, the city of East Grand Forks, Esther Township, Euclid Township, Farley Township, Grand Forks Township, Helgeland Township, Higdem Township, Huntsville Township, Keystone Township, Northland Township, Rhinehart Township, Sandsville Township, Sullivan Township, and Tabor Township.

Subd. 2. HOUSE DISTRICTS. Senate district 1 is divided into two house districts as follows:

(a) House district 1A consists of that portion of senate district 1 not included in house district 1B.

(b) House district 1B consists of all of Pennington and Red Lake Counties, that portion of Polk County contained in senate district 1, and that portion of Marshall County consisting of the city of Alvarado, Boxville Township, Comstock Township, McCrea Township, Oak Park Township, the city of Oslo, Vega Township, the city of Viking, Viking Township, the city of Warren, and Warrenton Township.

Sec. 3. {2.053) SECOND DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 2 consists of all of Clearwater, Mahnomen, and Norman Counties, that portion of Becker County not included in senate district 9 or 11, that portion of Beltrami County consisting of Alaska Township, Battle Township, Benville Township, the city of Blackduck, Buzzle Township, Cormant Township, Durand Township, the city of Funkley, Hagali Township, Hamre Township, Hines Township, Hornet Township, the city of Kelliher, Kelliher Township, Langor Township, Lee Township, Liberty Township, the unorganized territory of Lower Red Lake, Maple Ridge Township, Minnie Township, Nebish Township, the unorganized territory of North Beltrami, O'Brien Township, Quiring Township, Roosevelt

Township, Shooks Township, Shotley Township, the unorganized territory of Shotley Brook, Spruce Grove Township, Steenerson Township, Summit Township, the unorganized territory of Upper Red Lake, Waskish Township, and Woodrow Township, that portion of Clay County consisting of the city of Felton, Felton Township, Flowing Township, the city of Georgetown, Georgetown township, Goose Prairie Township, Hagen Township, Keene Township, Kragnes Township, Morken Township, the city of Ulen, Ulen Township, and Viding Township, and that portion of Polk County not included in senate district 1.

Subd. 2. HOUSE DISTRICTS. Senate district 2 is divided into two house districts as follows:

(a) House district 2A consists of all of Norman County, that portion of Becker County consisting of Atlanta Township, Cuba Township, Hamden Township, Riceville Township, Spring Creek Township, and Walworth Township, that portion of Clay County in senate district 2, that portion of Mahnomen County consisting of the city of Bejou, Bejou Township, Chief Township, Gregory Township, the city of Mahnomen, Marsh Creek Township, Pembina Township, Popple Grove Township, Rosedale Township, and the city of Waubun, and that portion of Polk County consisting of Andover Township, Badger Township, the city of Beltrami, Bygland Township, the city of Climax, the city of Crookston, Crookston Township, the city of Erskine, Fairfax Township, Fanny Township, the city of Fertile, the city of Fisher, Fisher Township, Garden Township, Garfield Township, Gentilly Township, Godfrey Township, Grove Park Township, Hammond Township, Hubbard Township, Kertsonville Township, King Township, Knute Township, Liberty Township, Lowell Township, the city of McIntosh, the city of Mentor, Nesbit Township, the city of Nielsville, Onstad Township, Parnell Township, Reis Township, Roome Township,

Russia Township, Scandia Township, Sletten Township, Tilden Township, Tynsid Township, Vineland Township, the city of Winger, Winger Township, and Woodside Township.

(b) House district 2B consists of that portion of senate district 2 not included in house district 2A.

Sec. 4. {2.063} THIRD DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 3 consists of all of Itasca County except the unorganized territory of Bowstring Lake, that portion of Aitkin County consisting of the city of Aitkin, Aitkin Township, Ball Bluff Township, Balsam Township, Cornish Township, Fleming Township, the city of Hill City, Hill Lake Township, Jevne Township, Libby Township, Logan Township, Macville Township, Morrison Township, the unorganized territory of Northeast Aitkin, the unorganized territory of Northwest Aitkin, the city of Palisade, Spencer Township, Turner Township, Verdon Township, Waukenabo Township, and Workman Township, that portion of Koochiching County not included in senate district 6, and that portion of St. Louis County consisting of Alango Township, Fine Lakes Township, the city of Floodwood, Floodwood Township, French Township, Halden Township, Linden Grove Township, the unorganized territory of McCormack Lake (59-21), Morcom Township, Prairie Lake Township, **that portion of the** unorganized **territory of Northwest St. Louis consisting of** precinct 62-21, **that portion of the unorganized territory of Sand Lake consisting of the precinct of** -West Sand Lake (60-20), and Sturgeon Township.

Annotation: The modified list of unorganized territories and precincts in the district clarifies the portions of St. Louis County included in senate district 3 but does not alter its composition.

Subd. 2. HOUSE DISTRICTS. Senate district 3 is divided into two house districts as follows:

(a) House district 3A consists of that portion of senate district 3 not included in house district 3B.

(b) House district 3B consists of that portion of Aitkin County included in senate district 3, that portion of Itasca County consisting of Blackberry Township, the city of Bovey, the city of Coleraine, Feeley Township, Goodland Township, Grand Rapids Township, Greenway Township, Harris Township, Iron Range Township, the city of Keewatin, the unorganized territory of Little Sand Lake, Lone Pine Township, Nashwauk Township, Sago Township, Splithand Township, Trout Lake Township, the city of Warba, Wawina Township, and Wildwood Township, and that portion of St. Louis County consisting of Fine Lakes Township, the city of Floodwood, Floodwood Township, Halden Township, and Prairie Lake Township.

Sec. 5. {2.073} FOURTH DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 4 consists of all of Hubbard County, that portion of Beltrami County not included in senate district 2, that portion of Cass County not included in senate district 12, that portion of Itasca County not included in senate district 3, and that portion of Wadena County not included in senate district 11.

Subd. 2. HOUSE DISTRICTS. Senate district 4 is divided into two house districts as follows:

(a) House district 4A consists of that portion of Beltrami County in senate district 4, and that portion of Hubbard County consisting of the city of Akeley, Akeley Township, Arago Township, Clay Township, Clover Township, Farden Township, Fern Township, Guthrie Township, Hart Lake Township, Helga Township, Hendrickson Township, Lake Alice Township, Lake

Emma Township, Lake George Township, Lake Hattie Township, Lakeport Township, the city of Laporte, Mantrap Township, Rockwood Township, Schoolcraft Township, Steamboat River Township, Thorpe Township, and White Oak Township.

(b) House district 4B consists of that portion of senate district 4 not included in house district 4A.

Sec. 6 {2.083} FIFTH DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 5 consists of that portion of St. Louis County consisting of Alborn Township, Angora Township, Arrowhead Township, Balkan Township, the city of Biwabik, Biwabik Township, the city of Brookston, the city of Buhl, Cedar Valley Township, Cherry Township, the city of Chisholm, Clinton Township, Colvin Township, Cotton Township, Culver Township, Ellsburg Township, Elmer Township, Embarrass Township, the city of Eveleth, Fayal Township, the city of Franklin, the city of Gilbert, Great Scott Township, the unorganized territory of Hay Lake, the unorganized territory of Heikkila Lake, the city of Hibbing, the city of Iron Junction, the unorganized territory of Janette Lake, Kelsey Township, Kugler Township, **that portion of the unorganized territory of Lake Vermilion consisting of Vermilion Lake Precinct (62-17),** Lavell Township, the city of Leonidas, McDavitt Township, the city of McKinley, the city of Meadowlands, Meadowlands Township, the city of Mountain Iron, Ness Township, New Independence Township, Northland Township, Payne Township, Pike Township, the unorganized territory of Potshot Lake, **that portion of the unorganized territory of Sand Lake consisting of the precincts of East Sand Lake (59-18), 60-18, and 60-19,** Sandy Township, Stoney Brook Township, Toivola Township, Van Buren Township, Vermilion Lake Township, the city of Virginia, White Township, and Wuori Township.

Annotation: As with senate district 3, these changes simply clarify unorganized territories and precincts included in senate district 5.

Subd. 2. HOUSE DISTRICTS. Senate district 5 is divided into two house districts as follows:

(a) House district 5A consists of that portion of senate district 5 not included in house district 5B.

(b) House district 5B consists of that portion of St. Louis County consisting of Alborn Township, Arrowhead Township, Balkan Township, the city of Brookston, the city of Buhl, Cedar Valley Township, Cherry Township, the city of Chisholm, Clinton Township, Cotton Township, Culver Township, Ellsburg Township, Elmer Township, Great Scott Township, the city of Hibbing, the city of Iron Junction, the unorganized territory of Janette Lake, Kelsey Township, Lavell Township, McDavitt Township, the city of Meadowlands, Meadowlands Township, Ness Township, New Independence Township, Northland Township, Payne Township, the unorganized territory of Potshot Lake, Stoney Brook Township, Tolvola Township, and Van Buren Township.

Sec. 7. (2.093) SIXTH DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 6 consists of all of Cook and Lake Counties, that portion of Koochiching County consisting of the unorganized territory of Nett Lake, and that portion of St. Louis County not included in senate district 3, 5, 7, or 8.

Subd. 2. HOUSE DISTRICTS. Senate district 6 is divided into two house districts as follows:

(a) House district 6A consists of that portion of senate district 6 not included in house district 6B.

(b) House district 6B consists of that portion of St. Louis

County consisting of Alden Township, North Star Township, Normanna Township, Gnesen Township, Rice Lake Township, Lakewood Township, Duluth Township, Canosia Township, and Fredenburg Township, and that portion of the city of Duluth not included in senate
district 7.

Sec. 8. (2.103) SEVENTH DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 7 consists of that portion of St. Louis County consisting of that portion of the city of Duluth lying west and south of a line described as follows: commencing at the intersection of the northern boundary of the city of Duluth and Calvary Road, easterly along Calvary Road to Woodland Avenue, southerly along Woodland Avenue to **Bruce** Street, easterly along **Bruce** Street to Wallace Avenue, southerly along Wallace Avenue to 5th Street, westerly along 5th Street to 21st Avenue, southerly along 21st Avenue to 4th Street, westerly along 4th Street to 15th Avenue, southeasterly along 15th Avenue to 1st Street, westerly along 1st Street to 12th Avenue East, southeasterly along 12th Avenue East to London Road, northeasterly along London Road to 13th Avenue East, southerly along 13th Avenue East and its extension to Lake Superior.

Annotation: Woodland Avenue does not intersect with Buffalo Street, but three streets do connect Woodland Avenue to Wallace Avenue. Using Arrowhead Road would have increased the population deviation in senate district 6 and pushed the deviation in house district 7B over the adopted, 2% maximum deviation governing all court-modified districts. Because Bruce Street improves deviations in senate district 6 and in districts 7 and 7B, it was chosen over St. Marie Street, which would create adequate but slightly higher deviations.

Subd. 2. HOUSE DISTRICTS. Senate district 7 is divided into two house districts as follows:

(a) House district 7B consists of that portion of senate district 7 lying east of a line described as follows: commencing at the intersection of the northern boundary of the city of Duluth and Rice Lake Road, southerly and southeasterly along Rice Lake Road **and Arrowhead Road** to Mesaba Avenue, southerly along Mesaba Avenue to 13th Street, easterly along 13th Street to 6th Avenue East, southerly along 6th Avenue East **to** State Highway 194, southwesterly along State Highway 194 to Mesaba Avenue, southerly along Mesaba Avenue to Lake Avenue, northerly along Lake Avenue to 9th Street, southwesterly along 9th Street to 1st Avenue West, northwesterly along 1st Avenue West **to Clark House Creek, northwesterly along Clark House Creek to 13th Street, southwesterly along 13th Street to 5th Avenue West, southerly along 5th Avenue West** to 9th Street, southwesterly along 9th Street to **the intersection of 11th Avenue West and** Observation Road, northerly and westerly along Observation Road to Arlington Avenue, southerly along Arlington Avenue to U.S. Highway 53, southerly along U.S. Highway 53 to 14th Street, southwesterly along 14th Street to Miller Creek, southerly along Miller Creek to **an extension of 7th Street, northeasterly along the extension of 7th Street to 25th Avenue West, southeasterly along 25th Avenue West** to 6th Street, northeasterly along 6th Street to 22nd Avenue West, southeasterly along 22nd Avenue West to Superior Street, northeasterly along Superior Street to 21st Avenue West, southeasterly along 21st Avenue West **to Interstate Highway 35, southwesterly along Interstate Highway 35 to Interstate Highway 535, southeasterly along Interstate Highway 535** and its extension to St. Louis Bay.

(b) House district 7A consists of that portion of senate

district 7 not included in house district 7B.

Annotation: Four corrections in the house boundary description clarify ambiguities. Before intersecting with Mesaba Avenue, Rice Lake Road turns briefly into Arrowhead Road; a reference to the latter was included.

The description of the boundary as it moves from 1st Avenue West to Rudolph Avenue and its extension to Blackman and Orange Avenues is also ambiguous. Because the census blocks follow Clark House Creek in this area, this reference is substituted to clarify the boundary line.

Further along this boundary, Chapter 246 attempted to follow Miller Creek to an extension of 6th Street. To avoid splitting a census block, we have substituted an extension of 7th Street and then followed 25th Avenue West to 6th Street to preserve as much of the original boundary as possible.

Finally, the references to Interstate Highways 35 and 535 conform the boundary with the census block information. These changes are intended to clarify the boundary in Chapter 246 while preserving its basic form and minimizing population deviations in all of the affected districts.

Sec. 9. {2.113} EIGHTH DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 8 consists of all of Carlton County, that portion of St. Louis County consisting of Brevator Township, the city of Hermantown, Industrial Township, Midway Township, the city of Proctor, and Solway Township, that portion of Aitkin County not included in senate district 3, and that portion of Pine County not included in senate district 18.

Subd. 2 HOUSE DISTRICTS. Senate district 8 is divided into two house districts as follows:

(a) House district 8A consists of that portion of St. Louis County included in senate district 8, and that portion of Carlton County consisting of the city of Carlton, the city of Cloquet, the city of Scanlon, the city of Thomson, Thomson Township, and Twin Lakes Township.

(b) House district 8B consists of that portion of senate district 8 not included in house district 8A.

Sec. 10 (2.123) NINTH DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 9 consists of all of Wilkin County, that portion of Becker County consisting of the city of Audubon, Audubon Township, Cormorant Township, Lake Eunice Township, the city of Lake Park, and Lake Park Township, that portion of Clay County not included in senate district 2, and that portion of Otter Tail County consisting of Carlisle Township, Dunn Township, the city of Elizabeth, Elizabeth Township, the city of Erhard, Erhards Grove Township, Lida Township, Maplewood Township, Norwegian Grove Township, Orwell Township, Oscar Township, Pelican Township, the city of Pelican Rapids, the city of Rothsay, Scambler Township, Trondhjem Township, and Western Township.

Subd. 2. HOUSE DISTRICTS. Senate district 9 is divided into two house districts as follows:

(a) House district 9A consists of that portion of Clay County consisting of the city of Moorhead, **Moorhead Township, and those portions of Oakport Township surrounded by the city of Moorhead**.

(b) House district 9B consists of that portion of senate district 9 not included in house district 9A.

Annotation: Including the portions of Oakport Township surrounded by Moorhead in house district 9A was the simplest way to ensure contiguity in house districts 9A and 9B. The state map

of Chapter 246 does not reveal a contrary, curative legislative intent. It does suggest an intent to include Moorhead Township in house district 9A. To ensure this corrected district's compliance with the adopted, 2% deviation criterion, we added Moorhead Township to house district 9A. In instances such as these, where substantive modifications were made to eliminate constitutional defects, the modifications were drafted to comply with the adopted criteria.

Sec. 11 (2.133) TENTH DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 10 consists of that portion of Douglas County not included in senate district 11 or 13, that portion of Otter Tail County not included in senate district 9 or 11, that portion of Pope County consisting of the city of Glenwood, Glenwood Township, Grove Lake Township, Leven Township, the city of Long Beach, Minnewaska Township, Reno Township, the city of Villard, the city of Westport, and Westport Township, and that portion of Stearns County consisting of Ashley Township, Getty Township, Raymond Township, the city of Sauk Centre, and Sauk Centre Township.

Subd. 2. HOUSE DISTRICTS. Senate district 10 is divided into two house districts as follows:

(a) House district 10A consists of that portion of Douglas County consisting of the city of Evansville, Evansville Township, Leaf Valley Township, Lund Township, the city of Millerville, Millerville Township, the city of Miltona, Miltona Township, and that portion of Otter Tail County included in senate district 10.

(b) House district 10B consists of that portion of Senate district 10 not included in house district 10A.

Sec. 12. (2.143) ELEVENTH DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 11 consists of all of Todd County, that portion of Becker County

consisting of Burlington Township, Detroit Township, the city of Detroit Lakes, Erie Township, the city of Frazee, and Lake View Township, that portion of Douglas County consisting of Belle River Township, the city of Osakis, Osakis Township, and Spruce Hill Township, that portion of Otter Tail County consisting of Blowers Township, the city of Bluffton, Bluffton Township, Butler Township, Candor Township, Compton Township, Corliss Township, the city of Deer Creek, Deer Creek Township, the city of Dent, Dora Township, Eastern Township, Edna Township, Gorman Township, Hobart Township, Homestead Township, Newton Township, the city of New York Mills, Oak Valley Township, Otto Township, Paddock Township, the city of Perham, Perham Township, Pine Lake Township, the city of Vergas, the city of Wadena, and Woodside Township, that portion of Stearns County consisting of the portion of Melrose Township not surrounded by the city of Melrose, Millwood Township, and the city of St. Rosa, and that portion of Wadena County consisting of the city of Aldrich, Aldrich Township, Bullard Township, Leaf River Township, Red Eye Township, Rockwood Township, the city of Sebeka, the city of Staples, Thomastown Township, the city of Verndale, the city of Wadena, Wadena Township, and Wing River Township.

Annotation: To correct this otherwise noncontiguous district, we qualified the portion of Melrose Township to be included, explicitly excluding the portion of Melrose Township that is surrounded by the city of Melrose. This section of Melrose Township falls with the city of Melrose and other portions of Stearns County not assigned to senate districts 10, 11, 16, or 20 into senate district 14.

Subd. 2 HOUSE DISTRICTS. Senate district 11 is divided into two house districts as follows:

(a) House district 11A consists of that portion of Becker County included in senate district 11, that portion of Otter Tail County included in senate district 11, excluding Eastern Township, Oak Valley Township, and Woodside Township, and that portion of Wadena County consisting of Leaf River Township, Red Eye Township, Rockwood Township, the city of Sebeka, and the city of Wadena.

(b) House district 11B consists of that portion of senate district 11 not included in house district 11A.

Sec. 13. {2.153} TWELFTH DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 12 consists of all of Crow Wing County, that portion of Cass County consisting of the cities of Motley and Pillager, and that portion of Morrison County not included in senate district 14 or 17.

Subd. 2. HOUSE DISTRICTS. Senate district 12 is divided into two house districts as follows:

(a) House district 12A consists of that portion of Crow Wing County consisting of the city of Brainerd, the city of Breezy Point, Center Township, the city of Crosby, the city of Crosslake, the city of Cuyuna, Dean Lake Township, the city of Emily, Fairfield Township, the city of Fifty Lakes, Gail Lake Township, Ideal Township, Irondale Township, the city of Ironton, the city of Jenkins, Jenkins Township, Lake Edwards Township, Little Pine Township, the city of Manhattan Beach, Mission Township, the city of Nisswa, Oak Lawn Township, Pelican Township, the city of Pequot Lakes, Perry Lake Township, Rabbit Lake Township, Ross Lake Township, Sibley Township, Timothy Township, the city of Trommald, the unorganized territory of West Crow Wing, and Wolford Township.

(b) House district 12B consists of that portion of senate district 12 not included in house district 12A.

Sec. 14. {2.163} THIRTEENTH DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 13 consists of all of Big Stone, Grant, Lac qui Parle, Stevens, Swift, and Traverse Counties, that portion of Chippewa County not included in senate district 15, that portion of Douglas County consisting of Holmes City Township, the city of Kensington, Solem Township, and Urness Township, and that portion of Pope County not included in senate district 10 or 14.

Subd. 2. HOUSE DISTRICTS. Senate district 13 is divided into two house districts as follows:

(a) House district 13A consists of all of Grant, Stevens, and Traverse Counties, that portion of Big Stone County consisting of the city of Barry, Browns Valley Township, the city of Graceville, Graceville Township, Malta Township, Moonshine Township, and Toqua Township, that portion of Douglas County contained in senate district 13, that portion of Pope County contained in senate district 13, and that portion of Swift County consisting of the city of Appleton, Appleton Township, the city of Danvers, Edison Township, Fairfield Township, Hegbert Township, the city of Holloway, Marysland Township, Moyer Township, Shible Township, Tara Township, and West Bank Township.

(b) House district 13B consists of that portion of senate district 13 not included in house district 13A.

Sec. 15. {2.173} FOURTEENTH DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 14 consists of that portion of Benton County consisting of the cities of Rice and Sartell, that portion of Morrison County consisting of Bellevue Township, the city of Bowlus, the city of Elmdale, Elmdale Township, the city of Royalton, Swan River Township, Two Rivers Township, and the city of Upsala, that portion of Pope County consisting of Bangor Township, the city of Brooten, Lake

Johanna Township, and the city of Sedan, and that portion of Stearns County not included in senate district 10, 11, 16, or 20.

Annotation: Chapter 246 assigned the Stearns County portion of Eden Valley to senate districts 14 and 20. Examination of the state map of Chapter 246, used in committee and during presentation of the bill in the house and senate, indicates an intent to place this area in senate district 20. Adding a reference to the portion of Stearns County in senate district 20 to the list of excluded areas in senate district 14 eliminates the double assignment and effectuates legislative intent.

Subd. 2. HOUSE DISTRICTS. Senate district 14 is divided into two house districts as follows:

(a) House district 14A consists of that portion of senate district 14 not included in house district 14B.

(b) House district 14B consists of that portion of Pope County contained in senate district 14, and that portion of Stearns County consisting of the city of Belgrade, the city of Brooten, the city of Cold Spring, Collegeville Township, Crow Lake Township, Crow River Township, Eden Lake Township, the city of Elrosa, Fair Haven Township, Farming Township, the city of Freeport, the city of Greenwald, Grove Township, the city of Kimball Prairie, Lake George Township, the city of Lake Henry, Lake Henry Township, Luxemburg Township, Lynden Township, Maine Prairie Township, the city of Meire Grove, the city of Melrose, the portion of Melrose Township surrounded by the city of Melrose, Munson Township, the city of New Munich, North Fork Township, Oak Township, the city of Paynesville, Paynesville Township, the city of Richmond, the city of Rockville, Rockville Township, the city of Roscoe, the city of St. Martin, St. Martin Township, the city of Spring Hill, Spring Hill Township, Wakefield Township, and Zion Township.

Annotation: To ensure contiguity, the portions of Melrose Township surrounded by the city of Melrose had to be assigned to this district.

Sec. 16. [2.183] FIFTEENTH DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 15 consists of all of Kandiyohi and Renville Counties, that portion of Chippewa County consisting of the city of Granite Falls, and Granite Falls Township, that portion of McLeod County consisting of Collins Township, Lynn Township, and the city of Stewart, that portion of Meeker County consisting of Acton Township, the city of Cedar Mills, Cedar Mills Township, the city of Cosmos, Cosmos Township, Danielson Township, Greenleaf Township, and the city of Grove City, and that portion of Yellow Medicine County consisting of the city of Granite Falls.

Subd. 2 HOUSE DISTRICTS. Senate district 15 is divided into two house districts as follows:

(a) House district 15A consists of that portion of Kandiyohi County consisting of Arctander Township, Burbank Township, Colfax Township, Dovre Township, Green Lake Township, Harrison Township, Irving Township, the city of Kandiyohi, Kandiyohi Township, Lake Andrew Township, Mamre Township, the city of New London, New London Township, Norway Lake Township, the city of Pennock, the city of Regal, Roseville Township, St. Johns Township, the city of Spicer, the city of Sunburg, the city of Willmar, and Willmar Township.

(b) House district 15B consists of that portion of senate district 15 not included in house district 15A.

Sec. 17. [2.193] SIXTEENTH DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 16 consists of that portion of Stearns County consisting of St. Augusta Township, the city of St. Cloud, St. Cloud Township, and the city

of Waite Park, and that portion of Benton County consisting of the city of Sauk Rapids, except that portion of the city of Sauk Rapids surrounded by Sauk Rapids Township, the portions of Sauk Rapids Township surrounded by the city of Sauk Rapids, and the city of St. Cloud, except that portion of the city of St. Cloud lying east of a line described as follows: commencing at the intersection of the eastern boundary of the city of St. Cloud and State Highway 23, southwesterly along State Highway 23 to 14th Avenue Southeast, southerly along 14th Avenue Southeast to County Road 47, easterly along County Road 47 to the eastern boundary of the city of St. Cloud.

Annotation: To resolve any confusion over the eastern boundary of this senate district, County Road 47 replaces 2nd Street Southeast. This clarification does not alter the physical location of the district boundary.

Subd. 2. HOUSE DISTRICTS. Senate district 16 is divided into two house districts as follows:

(a) House district 16A consists of that portion of Benton County in senate district 16, and that portion of Stearns County consisting of that portion of the city of St. Cloud lying east and north of a line described as follows: commencing at the intersection of the northern boundary of the city of St. Cloud and the extension of 25th Avenue North, southerly along the extension of 25th Avenue North to the Sauk River, southerly and westerly along the Sauk River to an extension of 33rd Avenue North, southerly along the extension and 33rd Avenue North to 5th Street North, easterly along 5th Street North to 30th Avenue North, southerly along 30th Avenue North and 30th Avenue South to 1st Street South, easterly along 1st Street South to 25th Avenue South, northerly along 25th Avenue South and 25th Avenue North to 2nd

Street North, easterly along 2nd Street North to Cooper Avenue North, southerly along Cooper Avenue North to West St. Germain Street, northeasterly along West St. Germain Street to 15th Avenue South, southeasterly along 15th Avenue South to 7th Street South, easterly along 7th Street South to East Lake Boulevard South, northerly along East Lake Boulevard South to 5th Street South, easterly along 5th Street South to 4th Avenue South, southerly along 4th Avenue South to 10th Street South, easterly along 10th Street south to the Mississippi River.

(b) House district 16B consists of that portion of senate district 16 not included in house district 16A.

Annotation: Because 33rd Avenue North does not cross the Sauk River, an "extension" of 33rd Avenue North was needed to bridge the gap. This extension preserves the intent of Chapter 246 while conforming to the census boundaries.

We also clarified and altered slightly the house districts' boundary between West St. Germain Street and 5th Street South. The description in Chapter 246 did not conform to the census boundaries. The new description follows both the census and the Minnesota Department of Transportation (Mn/DOT) annotations and distributes population in compliance with the 2% deviation criterion.

Sec. 18. {2.203} SEVENTEENTH DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 17 consists of Mille Lacs County, that portion of Benton County not included in senate district 14 or 16, that portion of Kanabec County not included in senate district 18, that portion of Sherburne County not included in senate district 19, and that portion of Morrison County consisting of: the city of Buckman, Buckman Township, the city of Genola, Granite Township, the city of

Harding, the city of Hillman, Hillman Township, Lakin Township, the city of Lastrup, Leigh Township, Morrill Township, Mount Morris Township, Pierz Township, Pulaski Township, and Richardson Township.

Subd. 2. HOUSE DISTRICTS. Senate district 17 is divided into two house districts as follows:

(a) House district 17A consists of that portion of senate district 17 not included in house district 17B.

(b) House district 17B consists of those portions of Benton and Sherburne Counties located in senate district 17.

Sec. 19. {2.213} EIGHTEENTH DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 18 consists of all of Chisago County, all of Isanti County, that portion of Kanabec County consisting of the city of Braham, Brunswick Township, Grass Lake township, the city of Grasston, and South Fork Township, and that portion of Pine County consisting of the city of Pine City, Pine City Township, the city of Rock Creek, and Royalton Township.

Annotation: By failing to include the small, unpopulated portion of the city of Braham in Kanabec County in senate district 18, Chapter 246 left this in senate district 17, with which it is not contiguous. The only reasonable correction of this defect is assigning this portion of Braham to senate district 18, which contains the rest of the city.

Subd. 2. HOUSE DISTRICTS. Senate district 18 is divided into two house districts as follows:

(a) House district 18A consists of all of Isanti County, that portion of Chisago County consisting of Lent Township and the city of Stacy, that portion of Kanabec County contained in senate district 18, and that portion of Pine County consisting of Royalton

Township.

(b) House district 18B consists of that portion of senate district 18 not included in house district 18A.

Sec. 20. {2.223} NINETEENTH DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 19 consists of that portion of Sherburne County consisting of the city of Becker, Becker Township, the city of Big Lake, Big Lake Township, the city of Clear Lake, Clear Lake Township, and the city of Elk River, and that portion of Wright County consisting of the city of Albertville, the city of Annandale, the city of Buffalo, Buffalo Township, Chatham Township, the city of Clearwater, Clearwater Township, Corinna Township, Frankfort Township, the city of Maple Lake, Maple Lake Township, the city of Monticello, Monticello Township, Otsego Township, the city of St. Michael, and Silver Creek Township.

Subd. 2. HOUSE DISTRICTS. Senate district 19 is divided into two house districts as follows:

(a) House district 19A consists of that portion of senate district 19 not included in house district 19B.

(b) House district 19B consists of that portion of Sherburne County consisting of the city of Elk River, and that portion of Wright County consisting of the city of Albertville, the city of Buffalo, Buffalo Township, Frankfort Township, Otsego Township, and the city of St. Michael.

Annotation: The legislature's proposed plan moved Chatham Township from house district 19A to house district 19B. Although such a change would improve the population deviation of 19B from 2.00% to -1.43%, the district as constructed in Chapter 246 is unambiguous and constitutionally sound. No change is warranted.

Sec. 21. {2.233} TWENTIETH DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 20 consists of that portion of Carver County consisting of the city of Hamburg, Hollywood Township, the city of Norwood, the city of Watertown, Watertown Township, the city of Young America, and Young America Township, that portion of McLeod County not included in senate district 15 or 23, that portion of Meeker County not included in senate district 15, that portion of Stearns County consisting of the city of Eden Valley, and that portion of Wright County not included in senate district 19, 33, or 34.

Annotation: Chapter 246 included in senate district 20 the portion of Wright County not included in senate districts 19 or 34. This placed a small segment of the city of Dayton in senate district 20, with which it is not contiguous. The contiguity problem is eliminated by placing this portion of Dayton in senate district 33, which contains the rest of the city, and limiting the portion of Wright County to be included in senate district 20 to that not contained in senate district 19, 33, or 34.

Subd. 2. HOUSE DISTRICTS. Senate district 20 is divided into two house districts as follows:

(a) House district 20A consists of that portion of senate district 20 not included in house district 20B.

(b) House district 20B consists of that portion of Carver County included in senate district 20, that portion of McLeod County consisting of Bergen Township, Hale Township, Helen Township, the city of Lester Prairie, the city of Plato, Rich Valley Township, the city of Silver Lake, the city of Winsted, and Winsted Township, and that portion of Wright County consisting of Albion Township, the city of Cokato, Cokato Township, French Lake Township, the city of Howard Lake, Marysville Township,

Middleville Township, the city of Montrose, the city of South Haven, Southside Township, Victor Township, the city of Waverly, and Woodland Township.

Sec. 22. {2.243} TWENTY-FIRST DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 21 consists of all of Lincoln, Pipestone, and Rock Counties, all of Lyon County except that included in senate district 22, all of Yellow Medicine County excluding the city of Granite Falls, that portion of Murray County consisting of Cameron Township, Chanarambie Township, the city of Chandler, Ellsborough Township, the city of Lake Wilson, and Moulton Township, that portion of Nobles County consisting of the city of Adrian, the city of Ellsworth, Grand Prairie Township, Leota Township, the city of Lismore, Lismore Township, and Westside Township, and that portion of Redwood County consisting of Gales Township, Granite Rock Township, Johnsonville Township, the city of Lucan, the city of Milroy, the city of Seaforth, Sheridan Township, Underwood Township, Vail Township, the city of Vesta, Vesta Township, the city of Wabasso, Waterbury Township, and Westline Township.

Subd. 2. HOUSE DISTRICTS. Senate district 21 is divided into two house districts as follows:

(a) House district 21A consists of that portion of senate district 21 not included in house district 21B.

(b) House district 21B consists of all of Lincoln, Pipestone, and Rock Counties, that portion of Lyon County consisting of Coon Creek Township, the city of Florence, Island Lake Township, Nordland Township, and Shelburne Township, and those portions of Murray and Nobles Counties contained in senate district 21.

Sec. 23. {2.253} TWENTY-SECOND DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 22

consists of all of Cottonwood and Jackson Counties, that portion of Brown County consisting of Albin Township, Bashaw Township, the city of Comfrey, Mulligan Township, and Stately Township, that portion of Lyon County consisting of the city of Balaton, Custer Township, the city of Garvin, Monroe Township, Rock Lake Township, and the city of Tracy, that portion of Martin County consisting of Cedar Township, the city of Ceylon, the city of Dunnell, Elm Creek Township, Fox Lake Township, Galena Township, Jay Township, Lake Belt Township, Lake Fremont Township, Manyaska Township, the city of Ormsby, the city of Sherburn, the city of Trimont, and the city of Welcome, that portion of Murray County not included in senate district 21, that portion of Nobles County not included in senate district 21, that portion of Redwood County consisting of the city of Lamberton, Lamberton Township, North Hero Township, the city of Revere, Springdale Township, and the city of Walnut Grove, and that portion of Watonwan County consisting of Adrian Township, the city of Butterfield, Butterfield Township, the city of Darfur, Long Lake Township, Nelson Township, the city of Odin, Odin Township, the city of Ormsby, and St. James Township.

Subd. 2. HOUSE DISTRICTS. Senate district 22 is divided into two house districts as follows:

(a) House district 22A consists of that portion of Cottonwood County consisting of Ann Township, Rose Hill Township, Southbrook Township, the city of Westbrook, and Westbrook Township, that portion of Jackson County consisting of Alba Township, Ewington Township, and La Crosse Township, that portion of Lyon County included in senate district 22, that portion of Murray County included in senate district 22, that portion of Nobles County included in senate district 22, and that portion of Redwood County consisting of North Hero Township, the city of

Revere, Springdale Township, and the city of Walnut Grove.

(b) House district 22B consists of that portion of senate district 22 not included in house district 22A.

Sec. 24. (2.263) TWENTY-THIRD DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 23 consists of that portion of Blue Earth County consisting of Butternut Valley Township, Cambria Township, and Judson Township, that portion of Brown County consisting of Burnstown Township, the city of Cobden, Cottonwood Township, Eden Township, the city of Evan, the city of Hanska, Home Township, Lake Hanska Township, Leavenworth Township, Linden Township, Milford Township, the city of New Ulm, North Star Township, Prairieville Township, Sigel Township, the city of Sleepy Eye, the city of Springfield, and Stark Township, that portion of McLeod County consisting of the city of Brownton, the city of Glencoe, Glencoe Township, Penn Township, Round Grove Township, and Sumter Township, that portion of Nicollet County not included in senate district 24, that portion of Redwood County not included in senate district 21 or 22, and all of Sibley County except for Faxon Township.

Subd. 2. HOUSE DISTRICTS. Senate district 23 is divided into two house districts as follows:

(a) House district 23A consists of that portion of Brown County consisting of Burnstown Township, the city of Cobden, Eden Township, the city of Evan, Home Township, Milford Township, the city of New Ulm, North Star Township, Prairieville Township, the city of Sleepy Eye, and the city of Springfield, and that portion of Redwood County included in senate district 23.

(b) House district 23B consists of that portion of senate district 23 not included in house district 23A.

Sec. 25. (2.273) TWENTY-FOURTH DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 24 consists of that portion of Blue Earth County consisting of Lime Township, the city of Mankato, Mankato Township, **the city of North Mankato,** the city of Skyline, and South Bend Township, that portion of

Le_Sueur County consisting of the city of Cleveland, Cleveland Township, the city of Kasota, Kasota Township, the city of Le_Sueur, Ottawa Township, and Washington Township, that portion of Nicollet County consisting of Belgrade Township, the city of Mankato, the city of North Mankato, Oshawa Township, the city of St. Peter, and Traverse Township.

Annotation: Although Chapter 246 placed the Nicollet County portion of the city of North Mankato in senate district 24, it failed to include the small portion of the city located in Blue Earth County in this district, leaving the area instead in senate district 26, with which it is not contiguous. We corrected the noncontiguity problem in senate district 26 by placing the entire city of North Mankato in senate district 24.

Subd. 2. HOUSE DISTRICTS. Senate district 24 is divided into two house districts as follows:

(a) House district 24A consists of that portion of Nicollet County consisting of the city of Mankato, and that portion of Blue Earth County consisting of **that portion of** the city of Mankato **south of U.S. Highway 14, less those portions of the city of Mankato surrounded by Mankato Township, plus those portions of Mankato Township surrounded by the city of Mankato**, the city of Skyline, and South Bend Township.

(b) House district 24B consists of that portion of senate district 24 not included in house district 24A.

Annotation: Chapter 246 did not account for the portions

of Mankato that are surrounded by Mankato Township and the portions of Mankato Township that are surrounded by Mankato; consequently, house districts 24A and 24B both contained noncontiguous portions. To correct these defects, we excluded from house district 24A the surrounded portions of Mankato and included the surrounded portions of Mankato Township. To offset the resulting population increase and minimize the population deviation in house district 24A, we excluded the portion of Mankato north of Highway 12 from the district, which brought both house districts within the population criterion.

Sec. 26. {2.283} TWENTY-FIFTH DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 25 consists of all of Rice County, that portion of Dakota County consisting of the city of Northfield, that portion of Scott County consisting of the city of New Prague, that portion of Le Sueur County not included in senate district 24 or 35, and that portion of Waseca County consisting of the city of Elysian.

Annotation: Chapter 246 includes most of the city of Elysian, the portion located in Le Sueur County, in senate district 25. However, a tiny segment of the city located in Waseca County was not included in senate district 25, but instead fell into senate district 26 and, in particular, into house district 26A, with which it is not contiguous. To correct the noncontiguity problem and to avoid splitting the city of Elysian unnecessarily, this portion of Waseca County is included in senate district 25.

Subd. 2. HOUSE DISTRICTS. Senate district 25 is divided into two house districts as follows:

(a) House district 25A consists of those portions of Dakota and Scott Counties included in senate district 25, that portion of Le

Sueur County consisting of the city of Heidelberg, Lanesburgh Township, the city of Le Center, Lexington Township, the city of Montgomery, Montgomery Township, and the city of New Prague, and that portion of Rice County consisting of Bridgewater Township, the city of Dundas, Forest Township, the city of Lonsdale, the city of Northfield, Webster Township, and Wheatland Township.

(b) House district 25B consists of that portion of senate district 25 not included in house district 25A.

Sec. 27. {2.293} TWENTY-SIXTH DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 26 consists of all of Faribault County, that portion of Blue Earth County not included in senate district 23 or 24, that portion of Martin County not included in senate district 22, that portion of Waseca County not included in senate district 25 or 28, and that portion of Watonwan County not included in senate district 22.

Annotation: Including the reference to senate district 25 prevents a double assignment of the city of Elysian, and places the entire city in that district.

Subd. 2. HOUSE DISTRICTS. Senate district 26 is divided into two house districts as follows:

(a) House district 26A consists of that portion of senate district 26 not included in house district 26B.

(b) House district 26B consists of all of Faribault County, that portion of Blue Earth County consisting of Beauford Township, Danville Township, Decoria Township, the city of Eagle Lake, the city of Good Thunder, Jamestown Township, Le Ray Township, Lyra Township, McPherson Township, the city of Madison Lake, the city of Mapleton, Mapleton Township, Medo Township, the city of Pemberton, the city of St. Clair, and Sterling

Township, and that portion of Waseca County consisting of Alton Township, Byron Township, Freedom Township, the city of Janesville, Janesville Township, the city of New Richland, New Richland Township, Vivian Township, the city of Waldorf, and Wilton Township.

Sec. 28. {2.303} TWENTY-SEVENTH DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 27 consists of all of Freeborn County, and that portion of Mower County not included in senate district 31.

Subd. 2. HOUSE DISTRICTS. Senate district 27 is divided into two house districts as follows:

(a) House district 27A consists of all of Freeborn County.

(b) House district 27B consists of that portion of senate district 27 not included in house district 27A.

Sec. 29. {2.313} TWENTY-EIGHTH DISTRICT.

Subd. 1. SENATE DISTRICT. Senate district 28 consists of all of Steele County, all of Dodge County except Vernon Township, that portion of Goodhue County consisting of Cherry Grove Township, Holden Township, Kenyon Township, the city of Kenyon, Roscoe Township, Wanamingo Township, and the city of Wanamingo, that portion of Olmsted County consisting of the city of Byron and Kalmar Township, and that portion of Waseca County consisting of Blooming Grove Township, Iosco Township, Otisco Township, St. Mary Township, the city of Waseca, and Woodville Township.

Subd. 2 HOUSE DISTRICTS. Senate district 28 is divided into two house districts as follows:

(a) House district 28A consists of that portion of Steele County consisting of Clinton Falls Township, Deerfield Township, Meriden Township, Owatonna Township, and the city of Owatonna, and that portion of Waseca County consisting of Blooming

Grove Township, Iosco Township, St. Mary Township, the city of Waseca, and Woodville Township.

(b) House district 28B consists of that portion of senate district 28 not included in house district 28A.

Sec. 30. {2.323} TWENTY-NINTH DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 29 consists of all of Wabasha County, that portion of Dakota County consisting of the city of Hastings, **the portion of Marshan Township surrounded by the city of Hastings,** and Ravenna Township, and that portion of Goodhue County not included in senate district 28 or 37.

Annotation: Hastings surrounds a portion of Marshan Township, but Chapter 246 did not include the surrounded area with Hastings in senate district 29. Instead, the area fell with the remaining, leftover portions of Dakota County into senate district 37, with which it is not contiguous. This noncontiguity is eliminated by adding the surrounded portion of the township to senate district 29.

Subd. 2. HOUSE DISTRICTS. Senate district 29 is divided into two house districts as follows:

(a) House district 29A consists of that portion of Dakota County consisting of the city of Hastings, **the portion of Marshan Township surrounded by the city of Hastings,** and Ravenna Township, and that portion of Goodhue County consisting of the city of Red Wing, and Welch Township.

Annotation: Adding the section of Marshan Township into house district 29A preserves the house districts' contiguity.

(b) House district 29B consists of that portion of senate district 29 not included in house district 29A.

Sec. 31. {2.333} THIRTIETH DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 30 includes that portion of Olmsted County consisting of Cascade Township, Marion Township, Rochester Township, and the city of Rochester lying within a line described as follows: commencing at the intersection of Country Club Road Northwest with the Rochester Township boundary and the boundary of the city of Rochester, easterly along Country Club Road Northwest to County Road 122, southerly along County Road 122 to Historic Drive Southwest, southeasterly along Historic Drive Southwest to County Road 122, southerly along County Road 122 to Salem Road Southwest, southeasterly and northeasterly along Salem Road Southwest to 17th Avenue Southwest, southerly along 17th Avenue Southwest to 16th Street Southwest, easterly along 16th Street Southwest to 11th Avenue Southeast, southerly along 11th Avenue Southeast to Pinewood Road Southeast, easterly along Pinewood Road Southeast to the eastern boundary of the city of Rochester, northerly and easterly along the boundary of the city of Rochester to the intersection of the boundary of the city of Rochester and Marion Street, southeasterly along Marion Street to the boundary of the city of Rochester, southeasterly, northerly, easterly, northerly, and westerly along the boundary of the city of Rochester to the intersection of the boundary of the city of Rochester and Sunrise Avenue Southeast, northerly along Sunrise Avenue Southeast to Rose Drive Southeast, northeasterly along Rose Drive Southeast to Harbor Drive Southeast, southeasterly, easterly, and northerly along Harbor Drive Southeast to the boundary of the city of Rochester, easterly along the boundary of the city of Rochester and Eastwood Road Southeast to 40th Avenue Southeast, northerly along 40th

Avenue Southeast to the boundary of the city of Rochester, easterly, northerly, westerly, northerly, westerly, southerly, westerly, northerly, westerly, northerly along the boundary of the city of Rochester to the intersection of West River Road, northerly along West River Road to the boundary of the city of Rochester, northerly and westerly along the boundary of the city of Rochester to 55th Street Northwest, westerly along 55th Street Northwest to the boundary of the city of Rochester, northerly, westerly, southerly, and westerly along the boundary of the city of Rochester to 55th Street Northwest, westerly along 55th Street Northwest to the boundary of the city of Rochester, northerly, westerly, and southerly along the boundary of the city of Rochester to 55th Avenue Northwest, westerly along 55th Avenue Northwest to the boundary of the city of Rochester, northwesterly along the boundary to 50th Avenue Northwest, southerly along 50th Avenue Northwest to Valley High Road Northwest, easterly along Valley High Road Northwest to the western boundary of the city of Rochester, southeasterly, westerly, and southerly to 19th Street Northwest, westerly along 19th Street Northwest to the boundary of the city of Rochester, southerly, westerly, southerly, easterly, and southerly along the boundary to the point of origin.

Annotation: As constructed in Chapter 246, senate district 30 contained the entire city of Rochester and nothing else. The population of Rochester exceeds the ideal by 5,445 people or 8.34%. If left uncorrected, the district would contribute to a total maximum deviation in excess of the 10% margin typically tolerated in legislatively drawn redistricting plans. Rochester also surrounds portions of the neighboring townships. By failing to include these portions in the same district as the city, Chapter 246 also created two noncontiguous districts, senate district 31 and

house district 31A.

Both plans submitted adequately resolved the problems in senate districts 30 and 31 and house districts 30A, 30B, 31A, and 31B. With slight modification, the plaintiff-intervenors' proposed districts 30, 30A, and 30B combined with the defendant-intervenors' proposed districts 31 and 31A provide the most compact districts and create the lowest overall population deviations. The revised senate district 30 incorporates these changes.

Subd. 2. HOUSE DISTRICTS. Senate district 30 is divided into two house districts as follows:

(a) House district 30A consists of that portion of senate district 30 **not included in house district 30B.**

(b) House district 30B consists of that portion of senate district 30 **lying south and east of a line described as follows: commencing at the intersection of County Road 122 and Country Club Road Northwest, easterly along Country Club Road Northwest to 2nd Street Southwest, easterly along 2nd Street Southwest to the boundary of the city of Rochester, northerly, easterly, and southerly along the boundary of the city of Rochester to 2nd Street Southwest, easterly to the extension of 20th Avenue Southwest, northerly along the extension of 20th Avenue Southwest and 20th Avenue Southwest to the boundary of the city of Rochester, then easterly, southerly, and easterly along the boundary of the city of Rochester to 2nd Street Northwest, easterly along 2nd Street Northwest to 18th Avenue Northwest, northerly along 18th Avenue Northwest and its extension to U.S. Highway 52, northerly along U.S. Highway 52 to 7th Street Northwest, easterly along 7th Street Northwest to 1st Avenue Northeast, northerly along 1st Avenue Northeast to West Silver Lake**

Road, northwesterly along West Silver Lake Road to North Broadway Avenue, northeasterly along North Broadway Avenue to 14th Street Northeast, southeasterly along 14th Street Northeast to 3rd Avenue Northeast, northerly along 3rd Avenue Northeast to North Broadway Avenue, northeasterly along North Broadway Avenue to Northern Heights Drive Northeast, southeasterly along Northern Heights Drive Northeast to 13th Avenue Northeast, northerly along 13th Avenue Northeast and its extension to the northern boundary of Cascade Township within senate district 30, easterly along the northern boundary of Cascade Township to the eastern boundary of senate district 30.

Annotation: The changes required in senate district 30 also necessitated the drawing of a new boundary between house districts 30A and 30B. The boundary proposed by the plaintiff-intervenors creates districts containing comparably low, population deviations and was, therefore, adopted.

Sec. 32. [2.343] THIRTY-FIRST DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 31 consists of that portion of Dodge County consisting of Vernon Township, that portion of Fillmore County not included in senate district 32, that portion of Mower County consisting of Bennington Township, Clayton Township, Frankford Township, the city of Grand Meadow, Grand Meadow Township, the city of Le Roy, Le Roy Township, Lodi Township, Pleasant Valley Township, the city of Racine, Racine Township, the city of Sargeant, Sargeant Township, and the city of Taopi, that portion of Olmsted County not included in senate district 28 or 30, and that portion of Winona County consisting of the city of St. Charles, St. Charles Township, and Saratoga Township.

Subd. 2. HOUSE DISTRICTS. Senate district 31 is divided into two house districts as follows:

(a) House district 31A consists of that portion of senate district 31 not included in house district 31B.

(b) House district 31B consists of those portions of Fillmore, Mower, and Winona Counties in senate district 31, and that portion of Olmsted County consisting of the city of Chatfield, the city of Dover, Dover Township, Elmira Township, the city of Eyota, Eyota Township, Orion Township, Quincy Township, and Viola Township.

Sec. 33. [2.353] THIRTY-SECOND DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 32 consists of all of Houston County, that portion of Fillmore County consisting of Norway Township, the city of Peterson, the city of Rushford, and the city of Rushford Village, and that portion of Winona County not included in senate district 31.

Subd. 2. HOUSE DISTRICTS. Senate district 32 is divided into two house districts as follows:

(a) House district 32A consists of that portion of Winona County consisting of the city of Elba, Elba Township, the city of Goodview, the city of Minneiska City, the city of Minnesota City, Mount Vernon Township, the city of Rollingstone, Rollingstone Township, Whitewater Township, the city of Winona, and Winona Township.

(b) House district 32B consists of that portion of senate district 32 not included in house district 32A.

Sec. 34. [2.363] THIRTY-THIRD DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 33 consists of that portion of Hennepin County consisting of Rogers, Corcoran, Hassan, Dayton, and Maple Grove, that portion of the city of Champlin not included in senate district 48, and that portion

of the city of Plymouth lying east and north of the line described as follows: commencing at the intersection of the northern boundary of the city of Plymouth and Interstate Highway 494, southerly along Interstate Highway 494 to **County Road** 47 easterly along **County Road** 47 to Pineview Lane North, southerly along Pineview Lane North to the Soo Line railroad tracks, easterly along the Soo Line railroad tracks to Larch Lane North, southerly along Larch Lane North to Rockford Road, easterly along Rockford Road to Zachary Lane North, southerly along Zachary Lane North to 36th Avenue North, easterly along 36th Avenue North to the eastern boundary of the city of Plymouth, **and that portion of Wright County consisting of the city of Dayton**.

Annotation: To avoid possible confusion and to incorporate the nomenclature currently used to denote the various types of highways, County Road 47 replaces Highway 47. The Wright County portion of Dayton that would otherwise be a noncontiguous part of senate district 20 is specifically included in this district.

Subd. 2. HOUSE DISTRICTS. Senate district 33 is divided into two house districts as follows:

(a) House district 33A consists of that portion of senate district 33 not included in house district 33B.

(b) House district 33B consists of that portion of the city of Plymouth in senate district 33 and that portion of the city of Maple Grove lying south and east of a line described as follows: commencing at the intersection of the eastern boundary of the city of **Maple Grove** with 101st Avenue North, westerly along 101st Avenue North to Zachary Lane, southerly along Zachary Lane to **the NSP power line south of** 97th Avenue North, **westerly** along **the NSP power line** to the extension of Xenium Lane, southerly along the extension of Xenium Lane and Xenium Lane to County

Road 30, westerly along County Road 30 to Interstate Highway 94, southerly along Interstate Highway 94 to 85th Avenue North, westerly along 85th Avenue North to **the creek north of Fish Lake, southerly along the creek to** Fish Lake, southerly along the western shore of Fish Lake to **Sunnyslope** Lane, southerly along **Sunnyslope** Lane to Timbercrest Drive, easterly along Timbercrest Drive to Zinnia, northerly along Zinnia to 73rd Avenue North, easterly along 73rd Avenue North **and its extension** to Interstate Highway 494, southerly along Interstate Highway 494 to the southern boundary of the city of Maple Grove.

Annotation: The portion of Maple Grove to be included in house district 33B should begin at the boundary of Maple Grove not Plymouth, as Chapter 246 mistakenly provides. Along the same boundary, Chapter 246 refers to 97th Street North and its extension; to conform with the census block data, the line must follow the NSP power line easterly to the Xenium Lane extension. Finally, the extensions near Fish Lake and Interstate Highway 494 are required to conform the boundary to Mn/DOT and census maps. These extensions do not alter the basic contour of the Chapter 246 boundary.

Sec. 35. {2.373} THIRTY-FOURTH DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 34 consists of that portion of Hennepin County not included in any other senate district, and that portion of Wright County consisting of the city of Delano, Franklin Township, **the city of Hanover,** the city of Rockford, and Rockford Township.

Annotation: Chapter 246 placed the Hennepin County portion of Hanover in senate district 34. It did not so include the Wright County portion of the city, leaving this section of Hanover with all remaining, leftover portions of Wright County in senate

district 20, with which it is not contiguous. Because half of the city was already contained in senate district 34, and the entire city is surrounded by area assigned to this district, we modified Chapter 246 to include this portion of Wright County in senate district 34.

Subd. 2. HOUSE DISTRICTS. Senate district 34 is divided into two house districts as follows:

(a) House district 34A consists of **the portion of Wright County included in senate district 34 and** that portion of Hennepin County consisting of the city of Hanover, the city of Greenfield, the city of Independence, the city of Minnetrista, the city of Mound, **the city of Rockford,** the city of Spring Park, and the city of St. Bonifacius.

(b) House district 34B consists of that portion of senate district 34 not included in house district 34A.

Annotation: Chapter 246 did not include the city of Rockford or the portions of Wright County contained in senate district 34 in house district 34A, leaving these areas as noncontiguous portions of house district 34B and creating large population deviations. The corrections resolve these constitutional defects and create districts that mirror those illustrated in the legislature's metro area map of Chapter 246.

Sec. 36. {2.383} THIRTY-FIFTH DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 35 consists of that portion of Carver County not included in senate district 20 or 43, that portion of Le Sueur County consisting of Derrynane Township, Sharon Township, and Tyrone Township, that portion of Scott County not included in senate district **25,** 37, or 41, and that portion of Sibley County consisting of Faxon Township.

Annotation: A reference to senate district 25 was added to eliminate the double assignment of the Scott County portion of New Prague. Placing this section of the city in senate district 25 not only prevents an unnecessary splitting of the city but also minimizes population deviations that would otherwise exceed constitutional limits.

Subd. 2. HOUSE DISTRICTS. Senate district 35 is divided into two house districts as follows:

(a) House district 35A consists of that portion of senate district 35 not included in house district 35B.

(b) House District 35B consists of that portion of Scott County consisting of Jackson Township, the city of Jordan, Louisville Township, the city of Prior Lake Sandcreek Township, the city of Shakopee, and Spring Lake Township.

Sec. 37. {2.393} THIRTY-SIXTH DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 36 consists of that portion of Dakota County consisting of that portion of the city of Burnsville lying south of a line described as follows: commencing at the intersection of the western boundary of Dakota County and County Road 42, easterly along County Road 42 to Burnsville Parkway, northeasterly along Burnsville Parkway to West 136th Street, easterly along West 136th Street to County Road 5, southerly along County Road 5 to West 138th Street, southeasterly along West 138th Street and James Avenue to 140th Street, easterly along 140th Street to McAndrews Road, easterly along McAndrews Road to Nicollet Avenue, northerly along Nicollet Avenue to State Highway 13, northeasterly along State Highway 13 to Cliff Road, easterly along Cliff Road to the eastern boundary of the city of Burnsville, that portion of the city of Apple Valley lying south of a line described as follows: commencing at

the intersection of the northern boundary of the city of Apple Valley with State Highway 77, southerly and then easterly along State Highway 77 to Johnny Cake Ridge Road, northerly along Johnny Cake Ridge Road to the extension of Eveleth Path, easterly and northeasterly along Eveleth Path and its extension to 126th Street West, easterly and southeasterly along 126th Street West and Diamond Path to the eastern boundary of the city of Apple Valley, and that portion of the city of Lakeville north and east of a line described as follows: commencing at the intersection of the northern boundary of the city of Lakeville and Flagstaff Avenue, southerly along Flagstaff Avenue to Dodd Boulevard, northeasterly along Dodd Boulevard to the northern boundary of the city of Lakeville.

Annotation: Chapter 246 omitted a reference to James Avenue, into which West 138th Street turns before intersecting with 140th Street. The law also erroneously described the direction to be taken along 140th Street to McAndrews Road as "southwesterly." The necessary changes have been made.

Subd. 2. HOUSE DISTRICTS. Senate district 36 is divided into two house districts as follows:

(a) House district 36A consists of those portions of the cities of Apple Valley and Lakeville contained in senate district 36.

(b) House district 36B consists of that portion of senate district 36 not included in house district 36A.

Sec. 38. {2.403} THIRTY-SEVENTH DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 37 consists of that portion of Scott County consisting of Credit River Township, Cedar Lake Township, New Market Township, the city of New Market, and the city of Elko, that portion of Dakota

County not included in senate district 25, 29, 36, 38, 39, or 41, and that portion of Goodhue County consisting of Cannon Falls Township, Leon Township, Stanton Township, and Warsaw Township, and the cities of Cannon Falls and Dennison.

Annotation: Chapter 246 assigned to senate district 37 the portions of Dakota County not included in senate districts 25, 29, 36, 38, or 39. However, because senate district 41 was assigned a portion of Burnsville, which is also in Dakota County, this part of the city ends up in both districts. The legislature's intent to divide Burnsville among senate districts 36, 38, and 41 appears clear from a reading of the description of those districts. The double assignment problem is corrected simply by adding the reference to senate district 41.

Subd. 2. HOUSE DISTRICTS. Senate district 37 is divided into two house districts as follows:

(a) House district 37A consists of that portion of house district 37 not included in house district 37B.

(b) House district 37B consists of that portion of senate district 37 consisting of that portion of Scott County located in senate district 37 and that portion of Dakota County consisting of that portion of the city of Lakeville included in senate district 37 and that portion of the city of Farmington lying north of a line described as follows: commencing at the intersection of the eastern boundary of the city of Farmington and the north branch of the Vermillion River, southwesterly along the north branch of the Vermillion River to Akin Road, northwesterly along Akin Road to 195th Street West, westerly along 195th Street West to Flagstaff Avenue, southerly along Flagstaff Avenue to 200th Street West, westerly along 200th Street West to the western boundary of the city of Farmington.

Annotation: Although unambiguous, the house district boundary drawn in Chapter 246 splits a populated census block by taking an extension of the boundary of Farmington westerly to Akin Road. To conform the boundary with the census information, it has been shifted slightly to the Vermillion River. The relatively minor change permits accurate calculation of each district's population.

Sec. 39. [2.413] THIRTY-EIGHTH DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 38 consists of that portion of Dakota County consisting of the cities of Eagan, Lilydale, and Mendota, that portion of the city of Apple Valley not included in senate district 36, that portion of the city of Burnsville north and east of a line described as follows: commencing at the intersection of the northern boundary of Dakota County and Interstate Highway 35W, southerly along Interstate Highway 35W to the Chicago Northwestern Transportation Company railroad tracks, easterly along the Chicago and Northwestern Transportation Company railroad tracks to Cliff Road, southerly and easterly along Cliff Road to Nicollet Avenue, southerly along Nicollet Avenue to State Highway 13, northeasterly along State Highway 13 to Cliff Road, easterly along Cliff Road to the eastern boundary of the city of Burnsville, and that portion of the city of Mendota Heights lying west and south of a line described as follows: commencing at the intersection of the northern boundary of the city of Mendota Heights and State Highway 13, southwesterly along State Highway 13 to Wachtler Avenue, southerly along Wachtler Avenue to Wentworth Avenue, easterly along Wentworth Avenue to Dodd Road, southwesterly along Dodd Road to Marie Avenue, easterly along Marie Avenue to the eastern boundary of the city of Mendota Heights.

Subd. 2. HOUSE DISTRICTS. Senate district 38 is divided into two house districts as follows:

(a) House district 38A consists of that portion of senate district 38 not included in house district 38B.

(b) House district 38B consists of that portion of the city of Apple Valley in senate district 38, that portion of the city of Burnsville east of a line described as follows: Commencing at the intersection of State Highway 13 and the eastern boundary of the city of Burnsville, southwesterly along State Highway 13 to Cliff Road, easterly along Cliff Road to the eastern boundary of the city of Burnsville, and that portion of the city of Eagan lying south of a line described as follows: commencing at the intersection of the western boundary of the city of Eagan and Diffley Road, easterly along Diffley Road to Lexington Avenue, northerly along Lexington Avenue to Yankee Doodle Road, easterly along Yankee Doodle Road to **Dodd Road,** southeasterly along **Dodd Road** to the eastern boundary of the city of Eagan.

Annotation: The Soo Line railroad tracks are parallel to Dodd Road. Because the census information uses only Dodd Road as a block boundary, however, substituting Dodd Road enables accurate calculation of the district populations.

Sec. 40. {2.423} THIRTY-NINTH DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 39 consists of that portion of Dakota County consisting of the cities of Inver Grove Heights, South St. Paul, Sunfish Lake, West St. Paul, and that portion of the city of Mendota Heights not included in senate district 38.

Subd. 2. HOUSE DISTRICTS. Senate district 39 is divided into two house districts as follows:

(a) House district 39A consists of that portion of senate

district 39 consisting of the cities of West St. Paul and Sunfish Lake, that portion of the city of Mendota Heights included in senate district 39, that portion of the city of South St. Paul lying north and west of a line described as follows: commencing at the intersection of the southern boundary of the city of South St. Paul and 18th Avenue South, northerly along 18th Avenue South to Southview Boulevard, easterly along Southview Boulevard to 17th Avenue South, northerly along 17th Avenue South to 4th Street North, easterly along 4th Street North to 14th Avenue North, northerly along 14th Avenue North to Wentworth Avenue, easterly along Wentworth Avenue and its extension to the Mississippi River, and that portion of the city of Inver Grove Heights lying west and north of a line described as follows: commencing at the intersection of the northern boundary of the city of Inver Grove Heights and Babcock Trail, southerly along Babcock Trail to Upper 55th Street, westerly along Upper 55th Street to the western boundary of the city of Inver Grove Heights.

(b) House district 39B consists of that portion of Senate district 39 not included in house district 39A.

Sec. 41. {2.433} FORTIETH DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 40 consists of that portion of the city of Bloomington not included in senate district 41, and that portion of the city of Richfield not included in senate district 63.

Subd. 2. HOUSE DISTRICTS. Senate district 40 is divided into two house districts as follows:

(a) House district 40A consists of that portion of senate district 40 lying north and east of a line described as follows: commencing at the intersection of the northern boundary of the city of Bloomington and **Xerxes Avenue, easterly along the northern boundary of the city of Bloomington to** Interstate

Highway 35W, southerly along Interstate Highway 35W to the Soo Line railroad tracks, northeasterly along the Soo Line railroad tracks to **Lyndale Avenue South, southerly along Lyndale Avenue South to** 95th Street, easterly along 95th Street to **3rd Avenue South, northerly along 3rd Avenue South to East 95th Street, easterly along East 95th Street to Clinton Avenue South, southerly along Clinton Avenue South to East 96th Street, easterly along 96th Street to** Chicago Avenue South, northerly along Chicago Avenue South to 94th Street, easterly along 94th Street to **Riverview Avenue, southerly along Riverview Avenue to** Old Shakopee Road, northeasterly along Old Shakopee Road to Old Cedar Avenue, southeasterly along Old Cedar Avenue to the Minnesota River.

(b) House district 40B consists of that portion of senate district 40 not included in house district 40A.

Annotation: The house districts' boundary in Chapter 246 contained a few ambiguous gaps which needed to be filled. The reference to Lyndale Avenue South connects the Soo Line railroad tracks with 95th Street. A slight shift was also necessary because 95th Street does not intersect with Chicago Avenue South. Because both house districts contain fewer people than an ideal district, too large a change could have caused one or the other to exceed the 2% maximum deviation adopted for court-modified districts. The least obtrusive shift possible, is moving the boundary south along Clinton Avenue South to 96th Street. The modified line equalizes the population deviations of the districts, both of which are approximately 1% below the ideal.

To clarify that the senate district 40 portion of Richfield is contained in house district 40A, the starting point of the boundary was also moved to the western corner of Richfield and assigned the portion of senate district 40 lying north of the boundary in house

district 40A.

Sec. 42. [2.443] FORTY-FIRST DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 41 consists of that portion of Dakota County consisting of that portion of the city of Burnsville not included in senate district 36 or 38, that portion of Scott County consisting of the city of Savage **and the area lying within a line described as follows: commencing at the intersection of County Road 18 and the eastern boundary of the city of Shakopee, southwesterly along County Road 18 to State Highway 101, southeasterly along State Highway 101 to the eastern boundary of the city of Shakopee**, and that portion of Hennepin County consisting of that portion of the city of Bloomington lying west of a line described as follows: commencing at the intersection of the southern boundary of the city of Bloomington with **an** extension of **Irwin** Avenue, **northerly along** the extension **and Irwin** Avenue to Overlook Drive, west on Overlook Drive to Normandale Boulevard, north on Normandale Boulevard to Old Shakopee Road, easterly along Old Shakopee Road to Kell Avenue, southerly along Kell Avenue to 108th Street, easterly along 108th Street to Xerxes Avenue South, northerly along Xerxes Avenue South to Old Shakopee Road, northeasterly along Old Shakopee Road to Nine Mile Creek, northerly and westerly along Nine Mile Creek to West 90th Street, southwesterly along West 90th Street to Poplar Bridge Road, easterly along Poplar Bridge Road to Kingsdale Drive, southwesterly along Kingsdale Drive to Poplar Bridge Road, southwesterly along Poplar Bridge Road to Normandale Boulevard, northerly along Normandale Boulevard to the northern boundary of the city of Bloomington, and that portion of the city of Eden Prairie not included in senate district 42 or 43.

Annotation: Senate district 41 is divided by the Minnesota River, and the only connection between the north and south halves of the district is the Bloomington Ferry Bridge. Although this bridge crosses the river within the senate district, Bloomington Ferry Road proceeds beyond the district boundary. No intersecting road exists that permits a resident of the district to remain in the district after crossing the bridge; a motorist must travel outside the district to reach another road enabling access back within the district. Because the district as constructed did not satisfy the contiguity requirement of reasonably unrestricted access, slight modification of the boundary was necessary to allow contiguous travel within the district.

We also substituted Irwin Avenue and its extension for France Avenue because France Avenue does not intersect with Bloomington's southern boundary and extending France to the boundary would split a large, populated census block. The boundary line's "northerly" direction is also clarified.

Subd. 2 HOUSE DISTRICTS. Senate district 41 is divided into two house districts as follows:

(a) House district 41A consists of that portion of senate district 41 lying north of a line described as follows: commencing with the intersection of Purgatory Creek and the western boundary of senate district 41, southeasterly along Purgatory Creek to Pioneer Trail, southeasterly along Pioneer Trail to the Bloomington Ferry Road, southerly along the Bloomington Ferry Road to Old Shakopee Road, easterly along Old Shakopee Road to the eastern boundary of senate district 41.

(b) House district 41B consists of that portion of senate district 41 not included in house district 41A.

Annotation: Pioneer Trail must be taken southeasterly to

intersect with the Bloomington Ferry Road. The change simply effectuates the intent apparent from the text read as a whole.

Sec. 43. [2.453] FORTY-SECOND DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 42 consists of that portion of Hennepin County consisting of the city of Edina, the city of Chanhassen, and that portion of the city of Eden Prairie not included in senate district 43 and lying west and north of a line described as follows: commencing at the intersection of the southern boundary of Hennepin County with the NSP power line that extends beyond the end of Concord Drive, northerly along the NSP power line to Riverview Road, westerly along Riverview Road to Mooer Lane, northerly along Mooer Lane to Silverwood Drive, easterly along Silverwood Drive to Homeward Hills Road, northerly along Homeward Hills Road to Anderson Lakes Parkway, easterly along Anderson Lakes Parkway to Hidden Oaks Drive, northeasterly along Hidden Oaks Drive and its extension to the southern shore of Anderson Lake, southerly southeasterly and northeasterly along the southern shore of Anderson Lake to the eastern boundary of the city of Eden Prairie.

Annotation: The senate district boundary in Eden Prairie starts ambiguously; there is no clear extension of Concord Drive to the city's boundary. The reference to the nearby NSP power line conforms the district boundary with the census data. We also corrected the ambiguities arising from obvious typographical errors in the boundary description, substituting Mooer for Noder and Hills for Mills. Other typographical errors that do not affect the clarity of the text were not corrected. Finally, the unpopulated, Hennepin County portion of Chanhassen was added to this district. This change effectuates the intent evident in the legislature's metro area map of Chapter 246 and eliminates the contiguity problem that

arises by leaving this district in senate district 34.

Subd. 2. HOUSE DISTRICTS. Senate district 42 is divided into two house districts as follows:

(a) House district 42A consists of that portion of the city of Edina lying north and east of a line described as follows: commencing at the intersection of the western boundary of the city of Edina with State Highway 62, easterly along State Highway 62 to State Highway 100, southerly along State Highway 100 to West 66th Street, easterly along West 66th Street to West Shore Drive, southeasterly along West Shore Drive to Laguna Drive, easterly along Laguna Drive to Wooddale Avenue, southerly along Wooddale Avenue to Dunberry Lane, easterly along Dunberry Lane to Cornelia Drive, southerly along Cornelia Drive to West 70th Street, easterly along West 70th Street to France Avenue, southerly along France Avenue to the southern boundary of the city of Edina.

(b) House district 42B consists of that portion of senate district 42 not contained in house district 42A.

Sec. 44. {2.463} FORTY-THIRD DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 43 consists of that portion of Carver County consisting of the cities of Chanhassen and Victoria, and that portion of Hennepin County consisting of the city of Deephaven, that portion of the city of Eden Prairie **lying north and west of a line described as follows: commencing at the intersection of the western boundary of the city of Eden Prairie and the Soo Line railroad tracks, northeasterly along the Soo Line railroad tracks to Valley View Road, easterly along Valley View Road to Baker Road, northerly along Baker Road to the northern boundary of the city of Eden Prairie,** the city of Excelsior, the city of Greenwood,

that portion of the city of Minnetonka lying south and west of a line described as follows: commencing at the intersection of the southern boundary of the city of Woodland and State Highway 101, southerly along State Highway 101 to Minnetonka Boulevard, easterly along Minnetonka Boulevard to Williston Road, southerly along Williston Road to Lake Street, easterly along Lake Street to **Maple** Lane, southerly along **Maple** Lane to State Highway 7, easterly along State Highway 7 to Interstate Highway 494, southerly along Interstate Highway 494 to the southern boundary of the city of Minnetonka, the city of Minnetonka Beach, that portion of the city of Orono lying south of the northern **boundary of Spring Park and its extension to the** shore of Lake Minnetonka, the city of Shorewood, the city of Tonka Bay, and the city of Woodland.

Annotation: Chapter 246 divided Eden Prairie among senate districts 41, 42, and 43; however, only senate district 42 described the portion of the city that it contained. The remaining area was intended to be split between senate districts 41 and 43, but no boundary was described. The adopted line, proposed by the legislature, follows the basic contours of the metro area map of Chapter 246 and produces population deviations within the court-adopted, 2% limit.

Chapter 246 erroneously referred to Christy Lane, which does not intersect with State Highway 7. Maple Lane is the nearest through street. As clarification, we also modified the description of the line bordering the portion of Orono to be included in senate district 43. Finally, we deleted a reference to Wayzata, which Chapter 246 had included in senate districts 43 and 45. Placing the city in senate district 45 minimizes the population deviations of the affected house and senate districts, all of which fall within the 2%, outer limit.

Subd. 2. HOUSE DISTRICTS. Senate district 43 is divided into two house districts as follows:

(a) House district 43A consists of that portion of senate district 43 lying in Carver County, and that portion of senate district 43 lying in Hennepin County consisting of the cities of Eden Prairie, Minnetonka Beach, Orono, and Tonka Bay, and that portion of the city of Shorewood lying west of a line described as follows: commencing at the intersection of the southern boundary of Hennepin County and First Avenue, northerly along First Avenue to Smithtown Road, westerly along Smithtown Road to Eureka Road, northerly along Eureka Road to Birch Bluff Road, easterly along Birch Bluff Road to the western boundary of the city of Tonka Bay.

(b) House district 43B consists of that portion of senate district 43 not included in house district 43A.

Annotation: By assigning only the Hennepin County cities contained in senate district 43 to house district 43A, Chapter 246 isolated the Eden Prairie portion of the house district from the rest of the district and created population deviations of over 40%. The metro area map of Chapter 246 indicates an intent to include the Carver County portions of senate district 43 in house district 43A. This change eliminates the districts' geographic and population problems. We also clarified that the portion of Shorewood contained in district 43A lies west of a line already described in the text.

Sec. 45. {2.473} FORTY-FOURTH DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 44 consists of that portion of Hennepin County consisting of the cities of Hopkins and St. Louis Park, and that portion of the city of Minnetonka lying south and east of a line described as follows:

commencing at the intersection of Interstate Highway 494 and the southern boundary of the city of Minnetonka, northerly along Interstate Highway 494 to Excelsior Boulevard, northeasterly and easterly along Excelsior Boulevard to the eastern boundary of the city of Minnetonka.

Subd. 2. HOUSE DISTRICTS. Senate district 44 is divided into two house districts as follows:

(a) House district 44B consists of that portion of senate district 44 in the city of St. Louis Park lying east of a line described as follows: commencing at the intersection of the northern boundary of the city of St. Louis Park and Flag Avenue, southerly along Flag Avenue to Westmoreland Lane, easterly along Westmoreland Lane and Franklin Avenue and its extension to Louisiana Avenue, southerly along Louisiana Avenue to the Burlington Northern railroad tracks, southwesterly along the Burlington Northern railroad tracks to Virginia Avenue, southerly along Virginia Avenue to West 28th Street, easterly along West 28th Street to Texas Avenue, southerly along Texas Avenue to the southern boundary of the city of St. Louis Park.

Annotation: The minor change clarifies that the extension to Louisiana Avenue is an extension of Franklin Avenue.

(b) House district 44A consists of that portion of senate district 44 not included in house district 44B.

Sec. 46. {2.483} FORTY-FIFTH DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 45 consists of that portion of Hennepin County consisting of the city of Wayzata, that portion of the city of Golden Valley not included in senate district 46, the city of Medicine Lake, that portion of the city of Minnetonka not included in senate district 43 or 44, and that portion of the city of Plymouth lying south and east of a line

described as follows: commencing at the intersection of the western boundary of the city of Plymouth with County Road 6, easterly along County Road 6 to Interstate Highway 494, northerly along Interstate Highway 494 to Rockford Road, easterly along Rockford Road to Zachary Lane, southerly along Zachary Lane to 36th Avenue North, easterly along 36th Avenue North to the eastern boundary of the city of Plymouth.

Subd. 2. HOUSE DISTRICTS. Senate district 45 is divided into two house districts as follows:

(a) House district 45A consists of that portion of senate district 45 consisting of the city of Wayzata, that portion of the city of Minnetonka located in senate district 45 and that portion of the city of Plymouth located in senate district 45 lying west of Interstate Highway 494.

(b) House district 45B consists of that portion of senate district 45 not included in house district 45A.

Annotation: Although Chapter 246 placed Wayzata in senate district 45, it did not include the city in house district 45A. The reference added is necessary to preserve the districts' contiguity and to minimize their population deviations.

Sec. 47. [2.493] FORTY-SIXTH DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 46 consists of that portion of Hennepin County consisting of the cities of Crystal, New Hope, and Robbinsdale, that portion of the city of Golden Valley lying north and west of a line described as follows: commencing at the intersection of the western border of the city of Golden Valley and the extension of Earl Street, easterly along the extension and Earl Street to Independence Avenue North, northerly along Independence Avenue North to Duluth Street, easterly along Duluth Street to Winnetka Avenue, and northerly

along Winnetka Avenue to the northern boundary of the city of Golden Valley, and that portion of the city of Brooklyn Center lying south of a line described as follows: commencing at the intersection of the western boundary of the city of Brooklyn Center and 58th Avenue North, easterly along 58th Avenue North to Shingle Creek, southerly along Shingle Creek to the southern boundary of the city of Brooklyn Center.

Annotation: Chapter 246 erroneously described the portion of Golden Valley to be included in senate district 46 as the area lying north and "east" of the boundary drawn. Because the boundary forms the southern and eastern borders of a rectangular area, however, the description must read north and "west." The boundary must also travel along the extension of Earl Street already referred to in Chapter 246 before reaching Earl Street itself and Independence Avenue.

Subd. 2. HOUSE DISTRICTS. Senate district 46 is divided into two house districts as follows:

(a) House district 46A consists of that portion of senate district 46 lying west of a line described as follows: commencing at the intersection of the northern boundary of the city of Crystal with County Road 81, southeasterly along County Road 81 to the northern boundary of the city of Robbinsdale, westerly, southerly, and westerly along the northern and western boundaries of the city of Robbinsdale to 42nd Avenue North, westerly along 42nd Avenue North to the Soo Line Railroad Company tracks, southerly along the Soo Line Railroad Company tracks to the western boundary of the city of Crystal, westerly, southerly, westerly, northerly, westerly, southerly, westerly, southerly, easterly, northerly, easterly, and southerly along the western boundary of the city of Crystal to the southern boundary of senate district 46.

(b) House district 46B consists of that portion of senate district 46 not included in house district 46A.

Annotation: The legislature proposed a specific and substantial change in the house districts' boundary to include all of New Hope in house district 46A. Although this change would prevent a city split, it would slightly increase the districts' population deviations. Moreover, the text of Chapter 246 is clear. Because court-modification is justified only to clarify ambiguous language or to correct statutory or constitutional defects, we rejected this proposal. We did change U.S. Highway 52 to its new name, County Road 81, and, as requested, clarified the directions to be taken to the southern boundary of the senate district.

Sec. 48. {2.503} FORTY-SEVENTH DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 47 consists of that portion of Hennepin County consisting of that portion of the city of Brooklyn Center not included in senate district 46 and that portion of the city of Brooklyn Park lying south and west of a line described as follows: commencing at the intersection of the western boundary of the city of Brooklyn Park and the southern boundary of the city of Osseo, easterly along the southern boundary of the city of Osseo to the Burlington Northern railroad tracks, southeasterly along the Burlington Northern railroad tracks to 85th Avenue North, easterly along 85th Avenue North to Xerxes Avenue, southerly along Xerxes Avenue to Pearson Parkway, southeasterly along Pearson Parkway to Newton Avenue, southerly along Newton Avenue to the southern boundary of the city of Brooklyn Park.

Annotation: By following 81st Avenue North and its extension from Xerxes Avenue to Pearson Parkway, Chapter 246 unnecessarily split four populated census blocks. Eliminating the

references to 81st Avenue and its extension closely approximates the line in Chapter 246 while following census block boundaries.

Subd. 2. HOUSE DISTRICTS. Senate district 47 is divided into two house districts as follows:

(a) House district 47A consists of that portion of senate district 47 lying west of a line described as follows: commencing at the intersection of the northern boundary of senate district 47 and Noble Avenue, southerly along Noble Avenue to 83rd Avenue North, easterly along 83rd Avenue North to 82nd Avenue North, southerly and westerly along 82nd Avenue North to June Avenue, southerly along June Avenue **and Brookdale Drive** to 75th Avenue North, westerly along 75th Avenue North to Lee Avenue, southerly and westerly along Lee Avenue to Major Avenue, southerly and westerly along Major Avenue to Noble Avenue, southerly along Noble Avenue to the southern boundary of senate district 47.

(b) House district 47B consists of that portion of senate district 47 not located in house district 47A.

Annotation: June Avenue is interrupted by Brookdale Drive for approximately one block before continuing on to 75th Avenue North. The addition merely clarifies the boundary.

Sec. 49. {2.513} FORTY-EIGHTH DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 48 consists of that portion of Anoka County consisting of that portion of the city of Coon Rapids not included in senate district 49, the city of Spring Lake Park, that portion of the city of Blaine south and west of a line described as follows: commencing at the intersection of the western boundary of the city of Blaine with the right-of-way of State Highway 610, southeasterly along the right-

of-way of State Highway 610 to Central Avenue Northeast, southerly along Central Avenue Northeast to 89th Avenue, easterly along 89th Avenue Northeast **to State Highway 65, northerly along State Highway 65 to an extension of 91st Avenue Northeast, easterly along the extension and 91st Avenue Northeast to Isanti Street Northeast, southerly along Isanti Street Northeast to Radisson Road Northeast, southwesterly along Radisson Road Northeast** to Hastings Street Northeast, southerly along Hastings Street Northeast **and its extension** to the southern boundary of the city of Blaine, and that portion of the city of Fridley lying north of a line described as follows: commencing at the intersection of the Mississippi River with Rice Creek, easterly along Rice Creek to East River Road, southeasterly along East River Road to Mississippi Street, easterly along Mississippi Street to Seventh Street Northeast, southerly along Seventh Street Northeast to 61st Avenue **Northeast**, easterly along 61st Avenue **Northeast** to West Moore Lake Drive, southeasterly along West Moore Lake Drive to State Highway 65, southerly along State Highway 65 to an extension of Lynde Drive, easterly along the extension of Lynde Drive and Lynde Drive to Regis Street, northerly along Regis Street to Hathaway Lane, easterly along Hathaway Lane **and its extension** to Matterhorn Drive, northerly along Matterhorn Drive to Gardena Avenue, easterly along Gardena Avenue to the eastern boundary of the city of Fridley, that portion of Ramsey County consisting of the city of Spring Lake Park, and that portion of Hennepin County consisting of that portion of the city of Brooklyn Park not included in senate district 47, the city of Osseo, and that portion of the city of Champlin lying east of a line described as follows: commencing at the intersection of the southern boundary of the city of Champlin with **U.S.** Highway 169, northerly along **U.S.** Highway 169 to Hayden

Lake Road, westerly along Hayden Lake Road to **the north-south NSP power line west of** Vera Street, northerly along **the north-south NSP power line** to French Lake Road, northeasterly along French Lake Road to Dayton Road, southeasterly along Dayton Road **and its extension** to **U.S.** Highway 169, northerly along **U.S.** Highway 169 to the Mississippi River.

Annotation: The Chapter 246 boundary in Blaine follows census boundaries, but those boundaries conflict with Mn/DOT annotations. We altered the line slightly to conform it with both Mn/DOT and census data. Although we did not add the directional portion of street names where Chapter 246 failed to do so, recognizable errors in street names were corrected. As an example, the misnamed 61st Avenue "East" was changed to "Northeast" to avoid possible confusion. We also added an extension to Hathaway Lane to bridge the gap in Chapter 246 between Hathaway and Matterhorn Drive, in conformity with the census block boundary. "United States" Highway 169 was abbreviated to the more accurate "U.S." Highway 169 designation. Dayton River Road changes to Dayton Road inside the city of Champlin and also requires an extension to U.S. Highway 169, filling a gap in the boundary drawn by Chapter 246.

Subd. 2. HOUSE DISTRICTS. Senate district 48 is divided into two house districts as follows:

(a) House district 48A consists of that portion of senate district 48 not included in house district 48B.

(b) House district 48B consists of that portion of senate district 48 located in Anoka and Ramsey Counties.

Sec. 50. [2.523] FORTY-NINTH DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 49

consists of that portion of Anoka County consisting of the city of Anoka and that portion of the city of Coon Rapids lying north of a line described as follows: commencing at the intersection of the Mississippi River with Coon Creek, northerly along Coon Creek to the Burlington Northern railroad tracks, southeasterly along the Burlington Northern railroad tracks to Coon Rapids Boulevard Extension, easterly along Coon Rapids Boulevard Extension to the north-south Burlington Northern railroad tracks, northerly along the north-south Burlington Northern railroad tracks to Egret Boulevard, easterly along Egret Boulevard to U.S. Highway 10, southeasterly along U.S. Highway 10 to Pleasure Creek, and northerly along Pleasure Creek to the eastern boundary of the city of Coon Rapids.

Annotation: Coon Rapids Boulevard does not intersect with the north-south Burlington Northern railroad tracks but Coon Rapids Boulevard "Extension" does. We also added "U.S." to Highway 10 and substituted Pleasure Creek, which follows census lines, for the extension of 94th Avenue, which cut through a populated census block.

Subd. 2. HOUSE DISTRICTS. Senate district 49 is divided into two house districts as follows:

(a) House district 49A consists of that portion of senate district 49 lying north and west of a line described as follows: commencing at the intersection of the Mississippi River with the southern boundary of the campus of Anoka Ramsey State Community College, easterly along the southern boundary of the campus of Anoka Ramsey State Community College to Mississippi Boulevard, northerly along Mississippi Boulevard to Coon Rapids Boulevard, northwesterly along Coon Rapids Boulevard to Round Lake Boulevard, northerly along Round Lake Boulevard to 119th

Avenue Northwest, easterly along 119th Avenue Northwest to an extension of Lily Street Northwest, northerly along the extension of Lily Street Northwest to the Burlington Northern railroad tracks, northwesterly along the Burlington Northern railroad tracks to Main Street, easterly along Main Street to U.S. Highway 10, southeasterly along U.S. Highway 10 to Hanson Boulevard, northeasterly along Hanson Boulevard to North Dale Boulevard, easterly along North Dale Boulevard to Coon Creek, northeasterly and southeasterly along Coon Creek and Sand Creek to the eastern boundary of the city of Coon Rapids.

(b) House district 49B consists of that portion of senate district 49 not located in house district 49A.

Annotation: There is no Magnolia Street in the area of Coon Rapids described in Chapter 246. There is a Marigold Street, but the census line follows an extension of Lily Street Northwest to the railroad tracks. We followed the census line. We also used the official annotation for "U.S." Highway 10 and, because Mn/DOT maps indicate that North Dale Boulevard crosses Coon Creek just before Coon Creek runs into Sand Creek, added a reference to the former.

Sec. 51. (2.533) FIFTIETH DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 50 consists of that portion of Anoka County north of a line described as follows: commencing at the intersection of the Mississippi River with the northwestern boundary of the city of Anoka, northerly and easterly along the northern boundary of the city of Anoka to the northern boundary of the city of Coon Rapids, easterly along the northern boundary of the city of Coon Rapids to University Avenue Northeast, southerly along University Avenue Northeast to Main Street, easterly along Main Street to Jefferson

Street Northeast, northerly along Jefferson Street Northeast to **128th Avenue Northeast, easterly along 128th Avenue Northeast to Monroe Street Northeast, southerly along Monroe Street Southeast to 128th Avenue Northeast, easterly along 128th Avenue Northeast to Van Buren Street Northeast, southerly along Van Buren Street Northeast to 127th Lane Northeast, easterly along 127th Lane Northeast to Polk Street Northeast, northerly along Polk Street Northeast to 128th Avenue Northeast, easterly along 128th Avenue Northeast to Taylor Street Northeast, southerly along Taylor Street Northeast to 127th Avenue Northeast, easterly along 127th Avenue Northeast to Buchanan Street Northeast, northerly along Buchanan Street Northeast to 127th Lane Northeast, easterly along 127th Lane Northeast to Central Avenue Service Road, northerly along Central Avenue Service Road to 129th Avenue Northeast, easterly along 129th Avenue Northeast to** Central Avenue Northeast, northerly along Central Avenue Northeast to the northern boundary of the city of Blaine, easterly along the northern boundary of the city of Blaine and the northern boundary of the city of Lino Lakes to the eastern boundary of Anoka County.

Annotation: The boundary of senate district 50 in Chapter 246 is impossible to follow after turning onto Madison Street, its ambiguities resulting in part from the census bureau's loose transcription of this area's geography, which is dominated by cul-de-sacs and dead-end streets. The substituted description begins at Jefferson Sureet Northeast and picks up the Chapter 246 boundary again at Central Avenue Northeast. The line deviates somewhat from the original but does follow streets that are easily recognizable in both Mn/DOT and census maps, while minimizing the population deviations of senate districts 50 and 51 and house districts 50A and 51A.

Subd. 2. HOUSE DISTRICTS. Senate district 50 is divided into two house districts as follows:

(a) House district 50A consists of that portion of senate district 50 lying north of a line described as follows: commencing at the intersection of the **western** boundary of Anoka County with the northern boundary of the city of **Ramsey**, easterly along the northern boundary of the city of **Ramsey** and the northern boundaries of the cities of **Andover and** Ham Lake to Central Avenue Northeast, southerly along Central Avenue Northeast to the northern boundary of the city of Blaine, easterly along the northern boundary of the city of Blaine and the northern boundary of the city of Lino Lakes to the eastern boundary of Anoka County.

(b) House district 50B consists of that portion of senate district 50 not included in house district 50A.

Annotation: The Chapter 246 boundary for these districts contains two mistakes. First, it starts at the "eastern" boundary of Anoka County; however, because the line purports to travel along the northern boundaries of Andover and Ham Lake, and these cities lie west of the county's eastern boundary, the description should begin at the western boundary of Anoka County. Second, while the line should travel easterly along the boundary of Andover, it cannot begin there because Andover lies in the middle of Anoka county. The boundary line should begin at the intersection of the northern boundary of the city of Ramsey and the western boundary of Anoka County. The metro area map of Chapter 246 supports these changes.

Sec. 52. [2.543] FIFTY-FIRST DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 51 consists of that portion of Anoka County consisting of all of the cities of Centerville, Lexington, and Lino Lakes, and that portion

of the city of Blaine not included in senate district 48, 50, or 53, and that portion of Washington County north of a line described as follows: commencing at the intersection of the western boundary of the city of Hugo with the southern boundary of the city of Hugo, easterly along the southern boundary of the city of Hugo to Goodview Avenue, northeasterly and northerly along Goodview Avenue to 137th Street North, easterly along 137th Street North to Homestead Avenue North, northerly along Homestead Avenue North to 140th Street North, easterly along 140th Street North to the eastern boundary of the city of Hugo, southerly along the eastern boundary of the city of Hugo to the southern boundary of May Township, easterly along the southern boundary of May Township to the eastern boundary of Washington County.

Annotation: The addition of "northeasterly" accounts for the short distance for which Goodview Avenue travels in that direction after intersecting with the Hugo boundary and before the street turns due north.

Subd. 2. HOUSE DISTRICTS. Senate district 51 is divided into two house districts as follows:

(a) House district 51A consists of the city of Lexington and that portion of the city of Blaine included in senate district 51.

(b) House district 51B consists of that portion of senate district 51 not included in house district 51A.

Sec. 53. {2.553} FIFTY-SECOND DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 52 consists of that portion of Anoka County consisting of the cities of Columbia Heights and Hilltop and that portion of the city of Fridley not included in senate district 48, and that portion of Ramsey County consisting of the cities of Blaine, Mounds View, and New Brighton.

Annotation: The unpopulated, Ramsey County portion of Blaine was not assigned by Chapter 246 to any district. Although this area could be assigned to any of three districts without affecting contiguity or population distribution, placing it in senate district 52 creates the most compact district and complies with the legislature's intent evident in the metro area map of Chapter 246.

Subd. 2. HOUSE DISTRICTS. Senate district 52 is divided into two house districts as follows:

(a) House district 52A consists of that portion of senate district 52 not included in house district 52B.

(b) House district 52B consists of that portion of Ramsey County consisting of the cities of Blaine and Mounds View and that portion of the city of New Brighton located north and east of a line described as follows: commencing at the intersection of 16th Street Northwest with the western boundary of the city of New Brighton, easterly along 16th Street Northwest to Silver Lake Road, southerly along Silver Lake Road to the southern boundary of the city of New Brighton.

Annotation: The Ramsey County portion of Blaine added to senate district 52 is also added to house district 52B, for the same reasons. The description of the boundary dividing New Brighton between the two house districts has been changed. Chapter 246 attempted to run the districts' boundary easterly along the western boundary of New Brighton, which cannot be done. A more significant defect arises from assigning the relatively small segment of the city surrounded by the line described to house district 52B; both districts are left with population deviations exceeding 50%. However, simply exchanging the two portions of New Brighton for one another greatly reduces both house districts' population deviations to under 1%. Reference to the metro area

map of Chapter 246 indicates a legislative intent in consonance with this change.

Sec. 54. {2.563} FIFTY-THIRD DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 53 consists of that portion of Ramsey County consisting of the cities of Arden Hills, Shoreview, North Oaks, Gem Lake, and Vadnais Heights; that portion of White Bear Township bordered by boundaries of Anoka County and the cities of Shoreview and North Oaks; those portions of the city of White Bear Lake and White Bear Township lying westerly of a line described as follows: commencing at the intersection of Otter Lake Road and the northern boundary of the city of Gem Lake, northerly along Otter Lake Road to County Road H-2, easterly along County Road H-2 to Bald Eagle Boulevard, southeasterly along Bald Eagle Boulevard and an extension of Bald Eagle Boulevard to the southeastern shoreline of Bald Eagle Lake, northerly, easterly, and northerly along the shoreline of Bald Eagle Lake to the northern boundary of Ramsey County; and that portion of the city of Little Canada not included in senate district 54; that portion of the city of Maplewood lying within a line described as follows: commencing at the intersection of the northern boundary of the city of Maplewood and White Bear Avenue, southerly along White Bear Avenue to County Road C, westerly along County Road C to Keller Parkway, northerly along Keller Parkway to the western boundary of the city of Maplewood, northerly and easterly along the boundary of the city of Maplewood to the point of origin; and that portion of Anoka County consisting of the city of Circle Pines and that portion of the city of Blaine lying within a line described as follows: commencing at the intersection of

Interstate Highway 35W and the northern boundary of Ramsey County, northerly along Interstate Highway 35W to an extension of 92nd Avenue Northeast, easterly along the extension of 92nd Avenue Northeast to Leyte Street Northeast, southerly along Leyte Street Northeast to 89th Avenue Northeast, easterly along 89th Avenue Northeast to Naples Street Northeast, northerly along Naples Street to Flowerfield Road, easterly along the extension and Flowerfield Road to Lexington Avenue, and northerly, easterly, southerly, easterly, southerly, and westerly along the boundaries of the city of Blaine to the point of origin.

Annotation: Chapter 246 contained an unnecessary and confusing reference to a railroad right-of-way, which has been deleted. The law referred to Otter Lake Road but also to Otter "Tail" Road; Otter Lake Road is correct. Chapter 246 also attempted to run the district line from Bald Eagle Boulevard to the shoreline of Bald Eagle Lake, but an extension is required. Such an extension is difficult to draw because Bald Eagle Boulevard parallels the shoreline. Moreover, the long, populated census block that borders the lake in this area prevents a simple extension to the lake of one of the nearby streets. However, the change made does preserve the basic boundary of Chapter 246, while following the census block boundaries.

To clarify the boundaries of senate districts 53 and 54, near Gervais Lake, we specifically described the portion of Maplewood to be included in this district. Finally, we rejected the legislature's proposal to add a section of Blaine lying north of Circle Pines to senate district 53 and house district 53A. Without the proposed change, house districts 53A and 51A both exceed the 2% deviation criterion. However, the districts as originally constructed by the legislature are within constitutional limits. Absent a constitutional defect or an ambiguity in this portion of the boundary, the change

proposed, although desirable, cannot be adopted.

Subd. 2. HOUSE DISTRICTS. Senate district 53 is divided into two house districts as follows:

(a) House district 53A consists of that portion of senate district 53 not included in house district 53B.

(b) House district 53B consists of that portion of senate district 53 consisting of the cities of North Oaks, Gem Lake, and Vadnais Heights; those portions of **the cities of Little Canada and Maplewood,** White Bear Township, and the city of White Bear Lake described in subdivision 1; and that portion of the city of Shoreview lying **east** of a line described as follows: commencing at the intersection of Hodgson Road and **State Highway 96, southeasterly along Hodgson Road to** Snail Lake Boulevard, westerly, southerly, and westerly along Snail Lake Boulevard to County Road F, westerly along County Road F to Lexington Avenue and the western boundary of the city, **and** southerly, easterly, northerly, **and westerly** along the boundaries of the city of Shoreview to the point of origin.

Annotation: As constructed in Chapter 246, house district 53A is not contiguous and, although their precise contents are difficult to discern, house districts 53A and 53B both far exceed the constitutional limit for population deviation. Because the two portions of Shoreview to be included in house district 53B overlap south of Snail Lake Boulevard, we consulted the black and white and the color metro area maps of Chapter 246 to resolve the ambiguity. The maps, although lacking detailed annotations, illustrate the portions of Shoreview to be included in each house district. They also reveal that house district 53B was intended to contain the senate district portions of Little Canada and Maplewood. The changes reflect the legislature's apparent intent and

create contiguous districts that satisfy constitutional population requirements and the adopted, 2% limit.

Sec. 55. {2.573} FIFTY-FOURTH DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 54 consists of that portion of Ramsey County consisting of the cities of Roseville, St. Anthony, Lauderdale, and Falcon Heights, that portion of the city of Maplewood lying within a line described as follows: commencing at the intersection of Rice Street and Larpenteur Avenue, easterly along Larpenteur Avenue to DeSoto **Street** and a railroad right-of-way, northeasterly along the railroad right-of-way and an extension of it to Parkway Drive, northeasterly along Parkway Drive to Frost Avenue, easterly along Frost Avenue to **Chamber** Street, northerly along **Chamber** Street **and its extension** to **an extension of** the railroad right-of-way, northeasterly along **the extension and** the railroad right-of-way to Hazelwood Street, northerly along Hazelwood Street to State Highway 36, easterly along State Highway 36 to White Bear Avenue, northerly along White Bear Avenue to County Road C, westerly along County Road C **to Keller Parkway, northerly along Keller Parkway** to the western boundary of the city of Maplewood, **southerly and westerly** along the western boundary of the city of Maplewood to the point of origin; that portion of the city of Little Canada lying within a line described as follows: commencing at the intersection of the northern boundary of the city of Little Canada and Rice Street, southerly, easterly, and northerly along the boundary of the city of Little Canada to **the intersection of Keller Parkway and the southern boundary of senate district 53, northerly and** westerly along Keller Parkway to Little Canada Road, westerly along Little Canada Road to Interstate Highway 35E, northerly along Interstate Highway 35E to Interstate Highway

694, northwesterly along Interstate Highway 694 to the northern boundary of the city of Little Canada, and westerly along the northern boundary of the city of Little Canada to the point of origin, and that portion of Hennepin County consisting of the city of St. Anthony.

Annotation: To avoid any confusion, DeSoto "Avenue" was corrected to DeSoto "Street." We also changed Atlantic Street to Chamber Street. Chapter 246 erroneously refers to both streets in its two descriptions of this boundary between senate districts 54 and 55. The metro area maps do not resolve the ambiguity. The choice of Chamber results, however, in smaller population deviations for senate districts 54 and 55 and house districts 54B and 55B. Whether Atlantic or Chamber Street is used, extensions are necessary to connect the street with the railroad right-of-way.

To finish the boundary description around Gervais Lake, we also clarified the portions of Maplewood and Little Canada to be included in this district. Although the descriptions are lengthier than those contained in Chapter 246, the modifications have not altered the content of the affected districts in this area.

Subd. 2. HOUSE DISTRICTS. Senate district 54 is divided into two house districts as follows:

(a) House district 54A consists of that portion of senate district 54 not included in house district 54B.

(b) House district 54B consists of those portions of the cities of Little Canada and Maplewood contained in senate district 54, and that portion of the city of Roseville lying within a line described as follows: commencing at the intersection of Snelling Avenue with the northern boundary of the city, southerly along Snelling Avenue to County Road C, easterly along County Road C to Hamline Avenue, southerly along Hamline Avenue to **State**

Highway 36, easterly along **State** Highway 36 to Lexington Avenue, southerly along Lexington Avenue to County Road B, easterly along County Road B to the eastern boundary of the city of Roseville, and northerly and **westerly** along the boundaries of the city of Roseville to the point of origin.

Annotation: The current annotation for State Highway 36 is used. Westerly was substituted for "easterly" as required to return the boundary line to the point of origin.

Sec. 56. {2.583} FIFTY-FIFTH DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 55 consists of that portion of Ramsey County consisting of the city of North St. Paul; that portion of the city of White Bear Lake not included in senate district 53; that portion of White Bear Township not included in senate district 53; that portion of Maplewood lying within a line described as follows: commencing at the intersection of Century Avenue and Interstate Highway 694, westerly along Interstate Highway 694 to White Bear Avenue, southerly along White Bear Avenue to **State** Highway 36, westerly along **State** Highway 36 to Hazelwood Street, southerly along Hazelwood Street to a railroad right-of-way, westerly along the railroad right-of-way to **an extension of** Chamber Street, southerly along **the extension and** Chamber Street to Frost Avenue, westerly and southwesterly along Frost Avenue to the extension of said railroad right-of-way, southwesterly along the extension and the railroad right-of-way to Larpenteur Avenue, easterly along Larpenteur Avenue to Century Avenue, northerly along Century Avenue to Holloway Avenue and the southern boundary of the city of North St. Paul, westerly, northerly, and easterly along the boundaries of the city of North St. Paul to Century Avenue, and northerly along Century Avenue to the point of origin; and, that part of the city of St. Paul lying within a line described as follows: commencing at

the intersection of Larpenteur Avenue and Interstate Highway 35E, southerly along Interstate Highway 35E to Arlington Avenue, easterly along Arlington Avenue to Wheelock Parkway, easterly along Wheelock Parkway to Johnson Parkway, southerly along Johnson Parkway to Maryland Avenue, easterly along Maryland Avenue to Kennard Street, northerly along Kennard Street to Sherwood Avenue, easterly along Sherwood Avenue to White Bear Avenue, northerly along White Bear Avenue to Larpenteur Avenue, and westerly along Larpenteur Avenue to the point of origin; and, that portion of Washington County lying within a line described as follows: the intersection of the southerly shoreline of White Bear Lake with the boundary between Ramsey and Washington counties, **easterly and southerly** along the shoreline, its extension, **and the eastern boundary of the city of Birchwood Village to County Road 29, easterly** along **County Road 29** to **State Highway 244**, northeasterly along **State Highway 244** to **County Road 12, northeasterly and easterly along County Road 12 to** Ideal Avenue North, southerly along Ideal Avenue North to the boundaries of the city of Pine Springs, **westerly**, southerly, **westerly**, southerly, **westerly**, and southerly along the boundaries of the city of Pine Springs to Interstate Highway 694, westerly to the eastern boundary of Washington County, and northerly along the boundary to the point of origin.

Annotation: We again updated the annotation for State Highway 36 and, as done in senate district 54, used Chamber Street and its extension in the district boundary. Near Lake Phalen, extensions of Wheelock Parkway and of the lake's shoreline were deleted to eliminate the ambiguity arising from the lack of definite points of extension and to avoid the unnecessary splitting of a census block.

The description in Chapter 246 of the Washington County

boundary was incomplete and inaccurate, although the direction of the boundary was clear from the text, and its location was discernible from the large metro area map of Chapter 246. The new description merely clarifies the boundary as originally drawn. Changing the directions around Pine Springs from "easterly" and southerly to "westerly" and southerly similarly clarifies the otherwise ambiguous district boundary, which cannot move easterly along the boundary of Pine Springs when starting at Ideal Avenue North.

Subd. 2. HOUSE DISTRICTS. Senate district 55 is divided into two house districts as follows:

(a) House district 55A consists of that portion of senate district 55 not included in house district 55B.

(b) House district 55B consists of that portion of Ramsey County consisting of the city of North St. Paul and those portions of the cities of Maplewood and St. Paul included in senate district 55.

Annotation: By including the senate district 55 portion of Washington County in house district 55B, Chapter 246 created two house districts with population deviations exceeding 10% each. Shifting this area to house district 54A brings both districts well within constitutional limits and conforms to the districts as depicted in the metro area maps of Chapter 246.

Sec. 57. (2.593) FIFTY-SIXTH DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 56 consists of that portion of Washington County not included in senate district 51, 55, or 57.

Subd. 2. HOUSE DISTRICTS. Senate district 56 is divided into two house districts as follows:

(a) House district 56A consists of that portion of senate district 56 north of a line described as follows: commencing at the intersection of the western boundary of Washington County with the southern boundary of the city of Mahtomedi easterly and northeasterly along the southern boundary of the city of Mahtomedi to the western boundary of Grant Township, southerly along the western boundary of Grant Township to the southern boundary of Grant Township, easterly along the southern boundary of Grant Township to the western boundary of Baytown Township southerly along the western boundary of Baytown Township to the southern boundary of Baytown Township, easterly along the southern boundary of Baytown Township to the eastern boundary of senate district 56.

(b) House district 56B consists of that portion of senate district 56 not included in house district 56A.

Sec. 58. {2.603} FIFTY-SEVENTH DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 57 consists of that portion of Ramsey County consisting of that portion of the city of Maplewood lying south of Larpenteur Avenue, and that portion of Washington County south and west of a line described as follows: commencing at the intersection of the western boundary of Washington County and the Chicago and Northwestern Transportation Company railroad tracks in the city of Oakdale, easterly along the Chicago and Northwestern Transportation Company railroad tracks to Interstate Highway 694, southerly along Interstate Highway 694 to Valley Creek Road, easterly along Valley Creek Road to Queens Drive, southerly along Queens Drive to Afton Road, southeasterly along Afton Road to Tower Drive, northerly along Tower Drive to Valley Creek Road, easterly along Valley Creek Road to Pioneer Drive, southerly along Pioneer Drive to Bailey Road, easterly along Bailey Road to

Woodbury Drive, southerly along Woodbury Drive to the southern boundary of the city of Woodbury, easterly along the southern boundary of Woodbury to the eastern boundary of the city of Cottage Grove southerly and westerly along the eastern and southern boundaries of Cottage Grove to the Mississippi River.

Subd. 2. HOUSE DISTRICTS. Senate district 57 is divided into two house districts as follows:

(a) House district 57A consists **of that portion of Ramsey County consisting of the portion of the city of Maplewood included in senate district 57 and that portion of Washington County consisting** of the city of Landfall and those portions of the cities of Oakdale and Woodbury included in senate district 57.

(b) House district 57B consists of that portion of senate district 57 not included in house district 57A.

Annotation: Chapter 246 included the Ramsey County portion of Maplewood contained in senate district 57 in house district 57A, with which it is not contiguous. Moving the Maplewood section to house district 57B corrects this constitutional defect and conforms the district composition to that illustrated in the metro area map of Chapter 246.

Sec. 59. {2.613} FIFTY-EIGHTH DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 58 consists of that portion of Hennepin County consisting of that portion of the city of Minneapolis located within an area described as follows: commencing at the intersection of the western boundary of the city of Minneapolis and Glenwood Avenue, easterly along Glenwood Avenue to the Burlington Northern railroad tracks, southeasterly and northeasterly along the Burlington Northern railroad tracks to Interstate Highway 94, southerly along Interstate Highway 94 to Interstate Highway 394, easterly along

Interstate Highway 394 to Hawthorne Avenue, northeasterly along Hawthorne Avenue to 9th Street North, southerly along 9th Street North to Hennepin Avenue, northeasterly along Hennepin Avenue to Washington Avenue North, northwesterly along Washington Avenue North to Plymouth Avenue North, easterly and northeasterly along Plymouth Avenue North to the Mississippi River, northwesterly along the Mississippi River to the northern boundary of the city of Minneapolis, westerly along the northern boundary of the city of Minneapolis to the western boundary of the city of Minneapolis, southerly along the western boundary of the city of Minneapolis to the point of origin.

Subd. 2. HOUSE DISTRICTS. Senate district 58 is divided into two house districts as follows:

(a) House district 58A consists of that portion of senate district 58 lying north of a line described as follows: commencing at the intersection of the western boundary of the city of Minneapolis and 21st Avenue North, easterly along 21st Avenue North to Upton Avenue North, northerly along Upton Avenue North to 24th Avenue North, easterly on 24th Avenue North to Sheridan Avenue North, northerly along Sheridan Avenue North to 26th Avenue North, easterly along 26th Avenue North to Penn Avenue North, northerly along Penn Avenue North to 29th Avenue North, easterly along 29th Avenue North to Humboldt Avenue North, northerly along Humboldt Avenue North to 30th Avenue North, easterly along 30th Avenue North to Dupont Avenue North, northerly along Dupont Avenue North to Lowry Avenue North, easterly along Lowry Avenue North to the eastern boundary of senate district 58.

(b) House district 58B consists of that portion of senate district 58 not included in house district 58A.

Annotation: Taking Lowry Avenue North easterly to the eastern boundary of senate district 58 splits a census block, but

because this is an unpopulated water block, the Chapter 246 boundary has been preserved.

Sec. 60. {2.623} FIFTY-NINTH DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 59 consists of that portion of Hennepin County consisting of that portion of the city of Minneapolis located within an area described as follows: commencing at the intersection of the Mississippi River and the northern boundary of the city of Minneapolis, easterly along the northern boundary of the city of Minneapolis to the eastern boundary of the city of Minneapolis, southerly along the eastern boundary of the city of Minneapolis to the Mississippi River, northwesterly along the Mississippi River to State Highway 122, southwesterly along State Highway 122 to Interstate Highway 35W, southwesterly along Interstate Highway 35W to 7th Street South, northwesterly along 7th Street South to 5th Avenue South, southwesterly along 5th Avenue South to 9th Street South, northwesterly along 9th Street South to the eastern boundary of senate district 58, northerly along the eastern boundary of senate district 58 to the point of origin.

Annotation: For clarification and accuracy, we substituted "State Highway 122," the road's new name, for "U.S. Highway 12."

Subd. 2 HOUSE DISTRICTS. Senate district 59 is divided into two house districts as follows:

(a) House district 59A consists of that portion of senate district 59 lying north of a line described as follows: commencing at the intersection of the Mississippi River and 8th Avenue Northeast, northeasterly along 8th Avenue Northeast to the east bank of the Mississippi River, southeasterly along the east bank of

the Mississippi River to **Hennepin Avenue, northeasterly along Hennepin Avenue to Main Street Northeast, northwesterly along Main Street Northeast to** 3rd Avenue Northeast, northeasterly along 3rd Avenue Northeast to 5th Street Northeast, northwesterly along 5th Street Northeast to Broadway Street Northeast, easterly along Broadway Street Northeast to Central Avenue Northeast, northerly along Central Avenue Northeast to the Burlington Northern railroad tracks, southeasterly along the Burlington Northern railroad tracks to Fillmore Street Northeast, northerly along Fillmore Street Northeast to 14th Avenue Northeast, easterly along 14th Avenue Northeast to Johnson Street Northeast, southerly along Johnson Street Northeast to Interstate Highway 35W, northeasterly and easterly along Interstate Highway 35W to the eastern boundary of the city of Minneapolis.

(b) House district 59B consists of that portion of senate district 59 not included in house district 59A.

Annotation: 3rd Avenue Northeast does not cross the Mississippi River and cannot be extended without splitting a populated census block. Slightly moving the boundary prevents any split and permits accurate calculation of the districts' populations. The change conforms to the metro area map of Chapter 246.

Sec. 61. {2.633} SIXTIETH DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 60 consists of that portion of Hennepin County consisting of that portion of the city of Minneapolis located within an area described as follows: commencing at the intersection of the western boundary of the city of Minneapolis and West 50th Street, easterly along West 50th Street to Penn Avenue South, northerly along Penn Avenue South to Lake Harriet Parkway, easterly and

northeasterly along Lake Harriet Parkway to West 46th Street, easterly along West 46th Street to Nicollet Avenue South, northerly along Nicollet Avenue South to West 36th Street, westerly along West 36th Street to Blaisdell Avenue South, northerly along Blaisdell Avenue South to West 34th Street, westerly along West 34th Street to Grand Avenue South, northerly along Grand Avenue South to West 32nd Street, westerly along West 32nd Street to Harriet Avenue South, northerly along Harriet Avenue South to West 31st Street, westerly along West 31st Street to Garfield Avenue South, northerly along Garfield Avenue South to West Lake Street, westerly along West Lake Street to Lyndale Avenue South, northerly along Lyndale Avenue South to Interstate Highway 94, easterly along Interstate Highway 94 and Interstate Highway 35W to the southern boundary of senate district 59, northwesterly along the southern boundary of senate district 59 to the southern boundary of senate district 58, westerly along the southern boundary of senate district 58 to the western boundary of the city of Minneapolis, southerly along the western boundary of the city of Minneapolis to the point of origin.

Subd. 2. HOUSE DISTRICTS. Senate district 60 is divided into two house districts as follows:

(a) House district 60A consists of that portion of senate district 60 lying north of a line described as follows: commencing at the intersection of the western boundary of the city of Minneapolis and West Lake Street, easterly along West Lake Street to the eastern boundary of senate district 60.

(b) House district 60B consists of that portion of senate district 60 not included in house district 60A.

Sec. 62. {2.643} SIXTY-FIRST DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 61 consists of that portion of Hennepin County consisting of that

portion of the city of Minneapolis located within an area described as follows: commencing at the intersection of Lyndale Avenue South and Interstate Highway 94, easterly and northeasterly along Interstate Highway 94 and Interstate Highway 35W to State Highway 122, easterly along State Highway 122 to Cedar Avenue South, southerly along Cedar Avenue South **to Minnehaha Avenue, southeasterly along Minnehaha Avenue to Cedar Avenue South, southwesterly and southerly along Cedar Avenue South** to Hiawatha Avenue, southerly along Hiawatha Avenue to East 28th Street, westerly along East 28th Street to 21st Avenue South, southerly along 21st Avenue South to East 32nd Street, westerly along East 32nd Street to 19th Avenue South, southerly along 19th Avenue South to East 34th Street, westerly along East 34th Street to Bloomington Avenue South, southerly along Bloomington Avenue South to East 36th Street, westerly along East 36th Street to 10th Avenue South, southerly along 10th Avenue South to East 38th Street, westerly along East 38th Street to Elliot Avenue South, southerly along Elliot Avenue South to East 44th Street, westerly along East 44th Street to Chicago Avenue South, southerly along Chicago Avenue South to East 50th Street, westerly along East 50th Street to Park Avenue South, southerly along Park Avenue South to East Minnehaha Parkway, westerly along East Minnehaha Parkway to East 50th Street, westerly along East 50th Street to Stevens Avenue South, northerly along Stevens Avenue South to East 46th Street, westerly along East 46th Street to the eastern boundary of senate district 60, northerly along the eastern boundary of senate district 60, to the point of origin.

Annotation: As in senate district 59, U.S. Highway 12 has been changed to State Highway 122. Cedar Avenue South turns into Minnehaha Avenue for about a block just south of

Interstate Highway 94, before turning southwesterly and eventually passing under Hiawatha Avenue. We added the necessary reference.

Subd. 2. HOUSE DISTRICTS. Senate district 61 is divided into two house districts as follows:

(a) House district 61A consists of that portion of senate district 61 lying north of a line described as follows: commencing at the intersection of the western boundary of senate district 61 and West 25th Street, easterly along West 25th Street to Pillsbury Avenue South, southerly along Pillsbury Avenue South to West 26th Street, easterly along West 26th Street to 1st Avenue South, southerly along 1st Avenue South to West Lake Street, easterly along West Lake Street **and East Lake Street** to the eastern boundary of senate district 61.

(b) House district 61B consists of that portion of senate district 61 not included in house district 61A.

Annotation: Lake Street changes from "West" to "East" before reaching the eastern boundary of the senate district.

Sec. 63. {2.653} SIXTY-SECOND DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 62 consists of that portion of Hennepin County consisting of that portion of the city of Minneapolis located within an area described as follows: commencing at the intersection of State Highway 122 and Cedar Avenue South, northeasterly along State Highway 122 to the Mississippi River, southeasterly and southerly along the Mississippi River to the extension of East 54th Street, westerly along the extension of East 54th Street and East 54th Street to 40th Avenue South, southerly along 40th Avenue South to East 55th Street, easterly along East 55th Street to 41st Avenue South,

southerly along 41st Avenue South to East 56th Street, westerly along East 56th Street to 28th Avenue South, southerly along 28th Avenue South to East 58th Street, westerly along East 58th Street to **Longfellow Avenue South, northerly along Longfellow Avenue South to an extension of East 57th Street, westerly along the extension of East 57th Street to Cedar Avenue South, southerly along Cedar Avenue South to East 58th Street, westerly along East 58th Street** to 14th Avenue South, northerly along 14th Avenue South to East 54th Street, easterly along East 54th Street to Bloomington Avenue South, northerly along Bloomington Avenue South to East 48th Street, westerly along East 48th Street to the eastern boundary of senate district 61, northerly along the eastern boundary of senate district 61 to the point of origin.

Annotation: We again changed U.S. Highway 12 to State Highway 122. Because Chapter 246 unnecessarily split a populated census block with the extension of East 58th Street to 14th Avenue South, we altered the boundary slightly to conform it with Mn/DOT maps and census data.

Subd. 2. HOUSE DISTRICTS. Senate district 62 is divided into two house districts as follows:

(a) House district 62A consists of that portion of senate district 62 lying north of a line described as follows: commencing at the intersection of the western boundary of senate district 62 and East 36th Street, easterly along East 36th Street to Cedar Avenue South, southerly along Cedar Avenue South to East 38th Street, easterly along East 38th Street to Hiawatha Avenue, southeasterly along Hiawatha Avenue to East 42nd Street, easterly along East 42nd Street and its extension to the Mississippi River.

(b) House district 62B consists of that portion of senate

district 62 not included in house district 62A.

Sec. 64. {2.663} SIXTY-THIRD DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 63 consists of that portion of Hennepin County consisting of that portion of the city of Minneapolis not contained in senate district 58, 59, 60, 61**, or 62**; that portion of the city of Richfield lying north of a line described as follows: commencing at the intersection of the western boundary of the city of Richfield and West 67th Street, easterly along West 67th Street **and its extensions** to Interstate Highway 35W, southerly along Interstate Highway 35W to West 73rd Street, easterly along West 73rd Street to 2nd Avenue South, southerly along 2nd Avenue South to the southern boundary of the city of Richfield, easterly along the southern boundary of the city of Richfield to the eastern boundary of the city of Richfield; the unorganized territory of Fort Snelling; and the Minneapolis-Saint Paul International Airport.

Annotation: Chapter 246 placed the portion of Minneapolis not contained in senate districts 57, 58, 59, 60, and 61 in senate district 63. Because senate district 57 does not contain any portion of the city, this superfluous reference was deleted. Senate district 62 was also added to the list to prevent a double assignment. This addition creates minimal population deviations and effectuates the legislature's apparent intent to make senate district 63 the residual district for Minneapolis. In the Richfield segment of the district boundary, references to the extensions of West 67th Street are required to complete the boundary line as it passes through a park near James and Irving Avenues and as it approaches Interstate Highway 35W.

Subd. 2. HOUSE DISTRICTS. Senate district 63 is divided into two house districts as follows:

(a) House district 63A consists of that portion of senate district 63 north of a line described as follows: commencing at the intersection of the western boundary of the city of Minneapolis and State Highway 62, easterly along State Highway 62 to Lyndale Avenue South, northerly along Lyndale Avenue South to West 58th Street, easterly along West 58th Street **and East 58th Street and its extension** to Interstate Highway 35W, southerly along Interstate Highway 35W to East 60th Street, easterly along East 60th Street to Portland Avenue South, northerly along Portland Avenue South to East 57th Street, southeasterly along East 57th Street to Chicago Avenue South, southerly along Chicago Avenue South to East 58th Street, easterly along East 58th Street to the western boundary of senate district 62.

(b) House district 63B consists of that portion of senate district 63 not included in house district 63A.

Annotation: The only change in the house districts clarifies the boundary West 58th Street and Interstate Highway 35W.

Sec. 65. {2.673} SIXTY-FOURTH DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 64 consists of that portion of Ramsey County consisting of that portion of the city of St. Paul located within an area described as follows: commencing at the intersection of the western boundary of the city of St. Paul and the southern boundary of senate district 66, easterly along the southern boundary of senate district 66 to Hamline Avenue, southerly along Hamline Avenue to Ayd Mill Road southeasterly along Ayd Mill Road to Summit Avenue, easterly along Summit Avenue to Griggs Street, northerly along Griggs Street to Portland Avenue, easterly along Portland Avenue to **Victoria Street, southerly along Victoria Street to Portland**

Avenue, easterly along Portland Avenue to Dale Street, southerly along Dale Street to Summit Avenue, easterly and northeasterly along Summit Avenue to Western Avenue, southerly along Western Avenue and its extension to Ramsey Street, easterly along Ramsey Street and Grand Avenue to Interstate Highway 35E, southwesterly along Interstate Highway 35E to St. Clair Avenue, westerly along St. Clair Avenue to **an extension of** Victoria **Street**, southerly along **the extension and** Victoria **Street** to Jefferson Avenue, westerly along Jefferson Avenue to Interstate Highway 35E, southerly along Interstate Highway 35E to the southern boundary of the city of St. Paul, southwesterly, northerly, westerly, and northwesterly along the southern boundary of the city of St. Paul to the western boundary of the city of St. Paul, northerly along the western boundary of the city of St. Paul to the point of origin.

Annotation: A park lying south of St. Clair Avenue prevents the boundary line from turning south on Victoria "Street;" we added an extension of Victoria and clarified the street name. Because Victoria Street interrupts Portland Avenue, we also inserted a reference to Victoria to preserve the boundary's continuity. No other changes in this otherwise unambiguous boundary are justified.

Subd. 2. HOUSE DISTRICTS. Senate district 64 is divided into two house districts as follows:

(a) House district 64A consists of that portion of senate district 64 lying north of a line described as follows: commencing at the intersection of the western boundary of the city of St. Paul and the extension of St. Clair Avenue, easterly along the extension of St. Clair Avenue and St. Clair Avenue to Snelling Avenue, southerly along Snelling Avenue to Jefferson Avenue, easterly

along Jefferson Avenue to Lexington Parkway, northerly along Lexington Parkway to the Soo Line railroad tracks, easterly along the Soo Line railroad tracks to the eastern boundary of senate district 64.

(b) House district 64B consists of that portion of senate district 64 not included in house district 64A.

Annotation: Chapter 246 mistakenly refers to senate district "64B," which does not exist. The deletion corrects the error.

Sec. 66. {2.683} SIXTY-FIFTH DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 65 consists of that portion of Ramsey County consisting of that portion of the city of St. Paul located within an area described as follows: commencing at the intersection of the southern boundary of the city of St. Paul and the eastern boundary of senate district 64, northerly, easterly, northerly, and northeasterly along the eastern boundary of senate district 64 to Grand Avenue, westerly along Grand Avenue and Ramsey Street to the extension of Western Avenue, northerly along the extension of Western Avenue and Western Avenue to Summit Avenue, southwesterly and westerly along Summit Avenue to Dale Street, northerly along Dale Street to Portland Avenue, westerly along Portland Avenue **to Victoria Street, northerly along Victoria Street to Portland Avenue, westerly along Portland Avenue** to Griggs Street, southerly along Griggs Street to Summit Avenue, westerly along Summit Avenue to Ayd Mill Road, northwesterly along Ayd Mill Road to Hamline Avenue, northerly along Hamline Avenue to Charles Avenue, easterly along Charles Avenue to Lexington Parkway, northerly along Lexington Parkway to Minnehaha Avenue, easterly along Minnehaha Avenue to Dale Street, northerly

along Dale Street to the Burlington Northern railroad tracks, easterly along the Burlington Northern railroad tracks past Interstate Highway 35E to the north-south Burlington Northern railroad tracks, southeasterly along the north-south Burlington Northern railroad tracks **to an** extension **of Clermont Street, southwesterly along the extension of Clermont Street** to the Mississippi River, southerly along the Mississippi River to the southern boundary of the city of St. Paul, westerly and southwesterly along the southern boundary of the city of St. Paul to the point of origin.

Annotation: The reference to Victoria Street in senate district 64 is also added in this district, which shares the same boundary.

Subd. 2. HOUSE DISTRICTS. Senate district 65 is divided into two house districts as follows:

(a) House district 65A consists of that portion of senate district 65 lying west of a line described as follows: commencing at the intersection of the northern boundary of senate district 65 and Rice Street, southerly along Rice Street to John Ireland Boulevard, southwesterly along John Ireland Boulevard to Summit Avenue, southwesterly along Summit Avenue to the southern boundary of senate district 65.

(b) House district 65B consists of that portion of senate district 65 not included in house district 65A.

Sec. 67. {2.693} SIXTY-SIXTH DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 66 consists of that portion of Ramsey County consisting of that portion of the city of St. Paul located within an area described as follows: commencing at the intersection of the western boundary of the city of St. Paul with the northern boundary of the city of St.

Paul, easterly along the northern boundary of the city of St. Paul to Interstate Highway 35E, southerly along Interstate Highway 35E to Arlington Avenue, easterly and southeasterly along Arlington Avenue and Wheelock Parkway **to Johnson Parkway, southeasterly along Johnson Parkway** to Maryland Avenue, westerly along Maryland Avenue to Edgerton Street, southerly along Edgerton Street to Cook Avenue, westerly along Cook Avenue to DeSoto Street, southerly along DeSoto Street to Case Avenue, westerly along Case Avenue and its extension to Interstate Highway 35E, southerly along Interstate Highway 35E to the **east-west** Burlington Northern railroad tracks, westerly along the **east-west** Burlington Northern railroad tracks to Dale Street, southerly along Dale Street to Minnehaha Avenue, westerly along Minnehaha Avenue to Lexington Parkway, southerly along Lexington Parkway to Charles Avenue, westerly along Charles Avenue to Hamline Avenue, southerly along Hamline Avenue to Interstate Highway 94, westerly along Interstate Highway 94 to the western boundary of the city of St. Paul, northerly along the western boundary of the city of St. Paul to the point of origin.

Annotation: Because Wheelock Parkway does not intersect with Maryland Avenue, the Johnson Parkway connection was required to continue the boundary line and to conform this description with that of the same boundary in senate district 55. The "east-west" description clarifies which of the two Burlington Northern tracks in the area is to be followed westerly to Dale Street.

Subd. 2. HOUSE DISTRICTS. Senate district 66 is divided into two house districts as follows:

(a) House district 66A consists of that portion of senate **district** 66 lying east of a line described as follows: commencing

at the intersection of the northern boundary of the city of St. Paul with Grotto Street, southerly along Grotto Street to Arlington Avenue, westerly along Arlington Avenue to Lexington Parkway, southerly along Lexington Parkway to East Como Lake **Drive**, southerly along East Como Lake **Drive** to **East Como Boulevard**, southerly along **East Como Boulevard and Como Avenue** to the Burlington Northern railroad tracks, westerly along the Burlington Northern railroad tracks to Chatsworth Street, southerly along Chatsworth Street to Front Avenue, easterly along Front Avenue to Western Avenue, southerly along Western Avenue to the southern boundary of senate district 66.

(b) House district 66B consists of that portion of senate district 66 not included in house district 66A.

Annotation: "District" replaces "portion," a typographical error. The boundary near Lake Como is also clarified in conformity with Mn/DOT and census annotations.

Sec. 68. {2.703} SIXTY-SEVENTH DISTRICT.

Subdivision 1. SENATE DISTRICT. Senate district 67 consists of that portion of Ramsey County consisting of that portion of the city of St. Paul located within an area described as follows: commencing at the intersection of the southern boundary of the city of St. Paul with the eastern boundary of senate district 65, northerly and northwesterly along the eastern boundary of senate district 65 to the northern boundary of senate district 65, westerly along the northern boundary of senate district 65 to the eastern boundary of senate district 66, northerly and easterly along the eastern boundary of senate district 66 to Maryland Avenue, easterly along Maryland Avenue to Kennard Street, northerly along Kennard Street to Sherwood Avenue, easterly along Sherwood Avenue to White Bear Avenue, northerly along White Bear

Avenue to the northern boundary of the city of St. Paul, easterly along the northern boundary of the city of St. Paul to the eastern boundary of the city of St. Paul, southerly along the eastern boundary of the city of St. Paul to the southern boundary of the city of St. Paul, westerly and northwesterly along the southern boundary of the city of St. Paul to the point of origin.

Subd. 2. HOUSE DISTRICTS. Senate district 67 is divided into two house districts as follows:

(a) House district 67A consists of that portion of senate district 67 lying north of a line described as follows: commencing at the intersection of the eastern boundary of senate district 67 with Old Hudson Road, westerly along Old Hudson Road to Ruth Street, northerly along Ruth Street to Minnehaha Avenue, **westerly** along Minnehaha Avenue to Frank Street, northerly along Frank Street to East Seventh Street, **westerly** along East Seventh Street to Earl Street, northerly along Earl Street to the Burlington Northern railroad tracks, **westerly** along the Burlington Northern railroad tracks to the **western** boundary of senate district 67.

(b) House district 67B consists of that portion of senate district 67 not included in house district 67A.

Annotation: In two places, Chapter 246 describes the house districts' boundary as moving westerly where it must move easterly to reach the next referenced street. The original boundary also followed the Burlington Northern tracks easterly to the eastern boundary of the senate district. Although this is possible, the area described was not a horizontal line. The area "north" of this line that was intended to comprise house district 67A was, therefore, not clearly ascertainable. Substituting "westerly" and "western," clarifies the boundary and the contents of the districts, which possess adequate population deviations and which mirror the districts illustrated in the metro area maps of Chapter 246.

Sec. 69. {2.713} CONTROLLING DESCRIPTION.

If a territory in this state is not named in sections 2 to 68, but (1) lies within the boundaries of a legislative district, or (2) lies between the boundaries of two or more legislative districts, for the purposes of sections 2 to 68, the territory referred to in clause (1) shall be a part of the legislative district within which it lies, and the territory referred to in clause (2) shall be a part of the contiguous legislative district having the smallest population.

If a territory in this state is within the boundaries of two or more legislative districts, for the purposes of sections 2 to 68, the territory shall be a part of the contiguous legislative district having the smallest population.

STATE OF MINNESOTA
SPECIAL REDISTRICTING PANEL
C8-91-985

Patricia Cotlow, Phillip Krass, Sharon LaComb, James Stein, and Theodore Suss, individually and on behalf of all Citizens of Minnesota similarly situation,

Plaintiffs,

and

John Walker, Howard Miller, Don Sudor, and Nkajlo Vangh,

Plaintiff-Intervenors,

vs.

ORDER FOR ENTRY OF JUDGMENT

Joan Growe, Secretary of State of Minnesota; and Patrick H. O'Connor, Hennepin County Auditor, individually and on behalf of all Minnesota county chief election officers,

Defendants,

and

The Seventy-seventh Minnesota State House of Representatives and the Seventy-seventh Minnesota State Senate,

Defendant-Intervenors.

On December 9, 1991, this court issued an order for judgment on legislative redistricting subject to the stay of the federal district court in Emison v. Growe, No. 4-91-202 (D. Minn. Dec. 5, 1991). That stay has been vacated by the United States Supreme Court, Cotlow v. Emison, No. 91-1084 (January 10, 1992).

As provided in the December 9, 1991, Findings of Fact, Conclusions of Law, and Order for Judgment, there is no just reason for delay and the court administrator is ordered to enter immediately the judgment of this court effective January 30, 1992.[1] Pursuant to Minn. R. Civ. P. 77.04, the administrator shall notify the parties that judgment has been entered.

IT IS SO ORDERED.

Dated: January 30, 1992. BY THE COURT:

/s/
Honorable Harriet Lansing
Honorable Kenneth J. Maas
Honorable William E. Walker

JUDGMENT

I hereby certify that the above Order for Entry of Judgment constitutes the Judgment of the Court.

Dated: January 30, 1992

Frederick Grittner
Supreme Court Administrator

/s/

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[1] Minn. Gen. R. Prac. 125, which imposes an automatic stay of the entry of judgment for thirty days unless otherwise ordered by the court, effective January 1, 1992, does not apply to this order.

STATE OF MINNESOTA

SPECIAL REDISTRICTING PANEL

C8-91-985

Patricia Cotlow, Phillip Krass, Sharon LaComb, James Stein, and Theodore Suss, individually and on behalf of all Citizens of Minnesota similarly situation,	Alan W. Weinblatt
Plaintiffs,	
and	
John Walker, Howard Miller, Don Sudor, and Nkajlo Vangh,	Bruce D. Willis
Plaintiff-Intervenors,	
vs.	
Joan Growe, Secretary of State of Minnesota; and Patrick H. O'Connor, Hennepin County Auditor, individually and on behalf of all Minnesota county chief election officers,	John R. Tunheim Michael O. Freeman
Defendants,	
and	
The Seventy-seventh Minnesota State House of Representatives and the Seventy-seventh Minnesota	John French Michael L. Cheever

State Senate,	Peter Wattson
Defendant-Intervenors.	

NOTICE OF ENTRY OF JUDGMENT

YOU ARE HEREBY NOTIFIED That an Order for Entry of Judgment and Judgment in the above entitled cause was, on January 30, 1992 entered in the office of the Court Administrator of the Minnesota Supreme Court.

Frederick Grittner
Supreme Court Administrator

/s/

STATE OF MINNESOTA
SPECIAL REDISTRICTING PANEL
C8-91-985

Patricia Cotlow, Phillip Krass, Sharon LaComb, James Stein, and Theodore Suss, individually and on behalf of all Citizens of Minnesota similarly situation,

Plaintiffs,

and

John Walker, Howard Miller, Don Sudor, and Nkajlo Vangh,

Plaintiff-Intervenors,

vs.

Joan Growe, Secretary of State of Minnesota; and Patrick H. O'Connor, Hennepin County Auditor, individually and on behalf of all Minnesota county chief election officers,

Defendants,

and

The Seventy-seventh Minnesota State House of Representatives and the Seventy-seventh Minnesota State Senate,

PROCEDURAL ORDER NO. 6

Defendant-Intervenors.

To address motions pending before this panel, a hearing has been scheduled for February 17, 1992, at 1:30 p.m., in the Minnesota Judicial Center, Courtroom 200. Parties should be prepared to present argument on (1) plaintiffs' motions to adopt the congressional redistricting plan passed by the legislature but not enacted into law and to set an expedited time schedule, and (2) plaintiff-intervenors' objection to this court's review of the existing congressional redistricting plan. The parties should also be prepared to report on the status of congressional redistricting proceedings in Emison v. Growe, No. 4-91-202 (D. Minn.).

The panel may also inquire into the following areas:

(a) Are there any significant and specific issues of state law or policy which would weigh in favor of state court review of congressional redistricting?

(2) What deference, if any, short of actual adoption should be given to the congressional plan passed by the legislature but vetoed by the governor?

(3) What is the scope of the court's authority (generally, no necessarily on the particular facts of this case) to order a plan independent of those submitted? Must the submitted plans be constitutionally "defective," or can the court simply find its plan to be "better"?

(4) What is the latest date a congressional plan can be adopted? What are the practical concerns of the parties?

As requested, the panel has received the parties' congressional redistricting proposals. To aid the panel's analysis of these plans, should such analysis be necessary, the panel requests submission of the computer plan files of each proposal. Although not part of

the original criteria for redistricting, written descriptions of all plans should also be received as soon as possible and not later than February 28, 1992.

IT IS SO ORDERED.

Dated: February 6, 1992 BY THE COURT:

/s/
Honorable Harriet Lansing
Honorable Kenneth J. Maas
Honorable William E. Walker

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

IN RE: APPORTIONMENT LITIGATION

James Emison, Judy Fairbanks, Marie Iverson, Ken Dean, Steve Castillo, Lew Freeman, and Yao Lo, individually and on behalf of all Citizens and Voters of the State of Minnesota similarly situated,

Plaintiffs,

and

Patricia Cotlow, Phillip Krass, Sharon LaComb, James Stein, and Theodore Suss, individually and on behalf of all Citizens of Minnesota similarly situated,

Intervening Plaintiffs,

vs.

Joan Growe, Secretary of State of the State of Minnesota; Mark Lundgren, Carver County Auditor, individually and on behalf of all County Auditors of the State of Minnesota,

Defendants,

and

Civil No. 4-91-202

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

The Seventy-seventh Minnesota State House of Representatives; the Seventy-seventh Minnesota State Senate; and Patrick O'Connor, Hennepin County Auditor, individually and on behalf of all County Auditors of the State of Minnesota,

Intervening Defendants.

and

Duane Benson, Terry Dempsey, Delores Hettig, Richard Harmon, David E. Peterson, E.M. Patricia Pidcock, and Frank Ringsmuth,

Plaintiffs,

vs.

Joan Growe, Secretary of State of the State of Minnesota,

Defendant,

and

The Seventy-seventy Minnesota State House of Representatives; and the Seventy-seventh Minnesota State Senate,

Applicants for Intervention as Defendants,

and

Patrick O'Connor, Hennepin County Auditor, individually and on behalf of all County

Civil No. 4-91-603

Auditors of the State of Minnesota,

Intervening Defendant.

Notice is hereby given that Joan Growe, Secretary of the State of Minnesota, Defendant; the Seventy-seventh Minnesota State House of Representatives and the Seventy-seventh Minnesota State Senate, Intervening Defendants; Patrick O'Connor, Hennepin County Auditor, individually and on behalf of all County Auditors of the State of Minnesota, Intervening Defendant; and Patricia Cotlow, Phillip Krass, Sharon LaComb, James Stein and Theodore Suss, Intervening Plaintiffs, all hereby appeal to the Supreme Court of the United States from the judgment entered in this action on February 19, 1992, and from the permanent injunction granted pursuant to said judgment. The injunction requires the Secretary of State and all those acting by and under her authority to accept filings and conduct elections only in accordance with the provisions of the three-judge panel's order reapportioning Minnesota's state legislative and congressional districts.

This appeal is taken pursuant to 28 U.S.C. § 1253.

Dated: February 25, 1992 Respectfully submitted,

HUBERT H. HUMPHREY, III
Attorney General
State of Minnesota

By: /s/
JOHN R. TUNHEIM
Chief Deputy Attorney General
JOCELYN F. OLSON
Assistant Attorney General
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(612) 296-6196

MICHAEL O. FREEMAN
Hennepin County Attorney

By: /s/
MICHAEL O. FREEMAN
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ATTORNEYS FOR DEFENDANT PATRICK O'CONNOR, HENNEPIN COUNTY AUDITOR, INDIVIDIAULLY AND ON BEHALF OF ALL COUNTY AUDITORS OF THE STATE OF MINNESOTA

WEINBLATT AND DAVIS

By:_____/s/_____
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ATTORNEYS FOR INTERVENING ATTORNEYS PATRICIA COTLOW, PHILLIP KRASS, SHARON LACOMB, JAMES STEIN AND THEODORE SUSS

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE
Minneapolis Branch • Post Office Box 8237 • Minneapolis, Minnesota 55408 • (612) 822-8205

October 15, 1991

Honorable Harriet Lansing
Honorable Kenneth J. Maas, Jr.
Honorable William E. Walker

c/o Clerk of Appellate Courts
245 Minnesota Judicial Center
25 Constitution Avenue
St. Paul, Minnesota 55155

Dear Judges Lansing, Maas, and Walker:

As the 1st Vice President and Chair of the Political Action Committee for the Minneapolis and the Minnesota/ Dakotas State Conference of the National Association For The Advancement of Colored People (NAACP), I am writing you regarding Cotlow v. Growe, File No. C3-91-985.

It is the NAACP's understanding that the Appellate Court is presently considering the adoption of a legislative redistricting plan for Minnesota.

The Minnesota/Dakotas State Conference and the Minneapolis Branch of the NAACP has had an opportunity to review and discuss the legislative redistricting plans which have been submitted to the Courts by the Legislature and by the intervening

plaintiffs.

As Chair of the Political Action Committee for both the State and Minneapolis Chapters of the NAACP, I led the discussion regarding these plans with particular focus given to the districts in Minneapolis and St. Paul, which as you may know, encompass substantial populations of "People of Color". Moreover, I discussed other jurisdictions such as St. Cloud, Duluth, Rochester, Willmar, Bemidji etc., with the above mentioned committee.

On Saturday, October 12, 1991 the Minnesota/Dakota State Conference held it's Annual Statewide meeting.

NAACP representatives from every branch in Minnesota were in attendance. After a thorough review the group voted unanimously to endorse the Legislature's Plan.

It is our belief and feeling that this plan provides the greatest opportunity for "People of Color" to be elected during the upcoming decade. Furthermore, we realize that we will be "locked out or locked in" for the balance of the century. We urge the court to adopt the legislative redistricting plan proposed by the Legislature.

Sincerely,

/s/

William J. Davis,
1st Vice President and Chair,
Political Action Committee - NAACP

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE
Minneapolis Branch • Post Office Box 8237 •
Minneapolis, Minnesota 55408 • (612) 822-8205

December 5, 1991

Honorable Donald P. Lay, Chief Judge
Eighth U.S. Circuit Court of Appeals
Federal Building
316 North Robert Street
St. Paul, MN 55101

Dear Judge Lay:

I am writing you on behalf of the National Association For The Advancement of Colored People (NAACP) regarding Emison vs Growe Court File #4-91-202.

I presently serve as the First Vice President and Chair of the Political Action Committee for the Minneapolis and the Minnesota/Dakota State Conference for the NAACP.

It is my understanding that the Eighth Circuit Court of Appeals is currently considering the adoption of the Legislative Redistricting Plan for Minnesota.

The Minnesota/Dakota State Conference and the Minneapolis Branch of the NAACP membership has had an opportunity to review and discuss both Redistricting Plan submitted to the Courts (the legislative and the intervening plaintiff version).

As Chair of the Political Action Committee for both the State and the Minneapolis Chapter of the NAACP, I Chaired the meeting and led the discussions regarding these plans. Because of the large

number of "people of color" in the legislative districts of Minneapolis and St. Paul we carefully studied the various options. Additionally, other jurisdictions such as St. Cloud, Duluth, Rochester, Wilmar, Bemidji etc. were also reviewed and discussed.

On Saturday, October 12, 1991, the Minnesota/Dakota State Conference membership unanimously voted to support the Legislative Redistricting Plan. And, on Sunday, October 20, 1991 the Minneapolis Branch also voted unanimously to support the Legislative Redistricting Plan.

The NAACP strongly urges the court at this time to adopt the Legislative Redistricting Plan proposed by the Legislature. It is our belief that this plan provides the greatest opportunity for "people of color" to be elected during the upcoming decade.

And finally, we clearly understand the importance of redistricting and the impact it will have on the communities of color for the balance of this century. Again, we urge your support and adoption of the Legislative Redistricting Plan.

We wish to thank you in advance for your consideration of this important voter/civil rights issue.

Sincerely,

/s/
William J. Davis,
First Vice President and Chair
Political Action Committee, NAACP

cc: U.S. District Judge Paul Magnuson
U.S. District Judge Harry McLaughlin
Lewis Freeman, Presient, Minnesota/Dakota State Conference
Matthew Little, President, Minneapolis Branch NAACP
Dennis Hayes, General Counsel, National NAACP

STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

102 STATE CAPITOL
ST. PAUL, MN 55155
TELEPHONE: (612) 296-6196
FACSIMILE: (612) 297-1193

January 31, 1992

Dear Local Election Official:

As you are well aware, Minnesota law requires local election districts to be redistricted within a specified number of days "after the legislature has been redistricted." Minn. Stat. §§ 204B.135 and 204B.14 (Supp. 1991) provide that city wards and precinct boundaries must be redistricted within sixty days and Minn. Stat. § 204B.135, subd.2 (Supp. 1991) mandates all other local government election districts to be redistricted within eighty days. These time requirements have been the subject of several injunctions in the cases that have been brought involving redistricting.

The special state court redistricting panel in *Cotlow v. Growe* issued an order for judgment on December 9 establishing a final legislative redistricting plan. This plan was stopped by the federal court redistricting panel in *Emison v. Growe* on December 5, but the federal order was subsequently vacated by the United States Supreme Court on January 10, which reinstated the state panel's order. On January 30, 1992, the state redistricting panel signed an order entering the judgment, thus establishing the state court plan as the redistricting plan for the legislature. At this time, there are

no injunctions in place which would stop enforcement of this plan.

In our view, the legislature, "has been redistricted" and thus the time deadline for redrawing local election districts started, effective January 30, 1992. We recognize that the possibility exists that the state court judgment will be appealed, and there is a ninety day window for appeal. In addition, the federal panel may attempt to further review the state court plan, although we do not believe there is a legal basis to do so. Nevertheless, we believe that local districts should proceed with redrawing local boundaries in an expeditious manner. If there are further court orders which halt the process, we will as advise you as well as keep you informed of any new developments.

To summarize, city wards and precinct boundaries must be redrawn by March 30, 1992; all other election districts by April 20, 1992. It is important to achieve finality in this process as soon as possible so that the new lines are drawn well in advance of the 1992 primary and general election. Please feel free to contact us if you have any questions.

Sincerely,

/s/
MICHAEL O. FREEMAN
Hennepin County
Attorney
(612) 348-3099

Attorney for Hennepin
County Auditor

/s/
JOHN R. TUNHEIM
Chief Deputy Attorney
General
(612) 296-2351

Attorney for Minnesota
Secretary of State
Joan Growe

CONSTITUTIONAL PROVISIONS INVOLVED

Section 1 of the Fourteenth Amendment to the United States Constitution provides in pertinent part:

No State shall . . . deny to any person within its jurisdiction the equal protection of the laws.

The Minnesota Constitution, article IV, section 2, provides:

The number of members who compose the senate and house of representatives shall be prescribed by law. The representation in both houses shall be apportioned equally throughout the different sections of the state in proportion to the population thereof.

The Minnesota Constitution, article IV, section 3, provides:

At its first session after each enumeration of the inhabitants of this state made by the authority of the United States, the legislature shall have the power to prescribe the bounds of congressional and legislative districts. Senators shall be chosen by single districts of convenient contiguous territory. No representative district shall be divided in the formation of a senate district. The senate districts shall be numbered in a regular series.

STATUTORY PROVISIONS INVOLVED

28 U.S.C. § 1738 provides in pertinent part:

The records and judicial proceedings in any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form.

Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory, or Possession from which they are taken.

42 U.S.C. § 1973 provides:

(a) No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title, as provided in subsection (b) of this section.

(b) A violation of subsection (a) of this section is established if, based on the totality of the circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) of this section in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent

to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: *Provided*, That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.

Minnesota Statutes, section 204B.14, subdivision 1a, provides:

It is the intention of the legislature to complete congressional and legislative redistricting activities in time to permit counties and municipalities to begin the process of reestablishing precinct boundaries as soon as possible after the adoption of the congressional and legislative redistricting plans but in no case later than 25 weeks before the state primary election in the year ending in two.

LEGISLATIVE RESOLUTIONS INVOLVED

House Concurrent Resolution No. 1 of the Seventy-seventh Minnesota State Legislature provides:

A plan presented to the Senate or House of Representatives for redistricting seats in the United States House of Representatives must adhere to the following standards:

(1) There must be eight districts, each entitled to elect a single member.

(2) The districts must be as nearly equal in population as practicable.

(3) The districts must be composed of convenient contiguous territory. To the extent consistent with the other standards in this resolution, districts should be compact. Contiguity by water is sufficient if the water is not a serious obstacle to travel within the district.

(4) The districts must be numbered in a regular series, beginning with congressional district 1 in the southeast corner of the state and ending with district 8 in the northeast corner of the state.

(5) The districts must not dilute the voting strength of racial or language minority populations. Where a concentration of a racial or language minority population makes it possible, the districts must increase the probability that members of the minority will be elected.

(6) A county, city, or town must not be divided into more than one district except as necessary to meet equal-population requirements or to form districts that are composed of convenient contig-

uous territory.
(7) The districts should attempt to preserve communities of interest where that can be done in compliance with the preceding standards.
(8) The geographic areas and population counts used in maps, tables, and legal descriptions of the districts must be those used by the Legislative Coordinating Commission's Subcommittee on Redistricting.

The Subcommittee on Redistricting will notify the President of the Senate and the Speaker of the House of Representatives when the necessary 1990 census data has been received from the United States Census Bureau, loaded into the Subcommittee's computerized redistricting system, and verified as ready for use in redistricting. A redistricting plan will not be considered for adoption by the Senate or House of Representatives until the notice has been given.

House Concurrent Resolution No. 2 of the Seventy-seventh Minnesota State Legislature provides:

A plan presented to the Senate or House of Representatives for redistricting seats in the Senate and House of Representatives must adhere to the following standards:

(1) The Senate must be composed of 67 members. The House of Representatives must be composed of 134 members.

(2) Each district is entitled to elect a single member.

(3) A representative district may not be divided in the formation of a senate district.

(4) The districts must be substantially equal in population. The population of a district must not deviate from the ideal by more than two percent, plus or minus.

(5) The districts must be composed of convenient contiguous territory. To the extent consistent with the other standards in this resolution, districts should be compact. Contiguity by water is sufficient if the water is not a serious obstacle to travel within the district.

(6) The districts must be numbered in a regular series, beginning with House district 1A in the northwest corner of the state and proceeding across the state from west to east, north to south, but bypassing the seven-county metropolitan area until the southeast corner has been reached; then to the seven-county metropolitan area outside the cities of Minneapolis and St. Paul; then in Minneapolis and St. Paul.

(7) The districts must not dilute the voting strength of racial or language minority populations. Where a concentration of a racial or language minority makes it possible, the districts must increase the probability that members of the minority will be elected.

(8) A county, city, or town should not be divided into more than one district except as necessary to meet equal-population requirements or to form districts that are composed of convenient contiguous territory.

(9) The districts should attempt to preserve communities of interest where that can be done in compliance with the preceding standards.

(10) The geographic areas and population counts used in maps, tables, and legal descriptions of the districts must be those used by the Legislative Coordinating Commission's Subcommittee on Redistricting.

The Subcommittee on Redistricting will notify the President of the Senate and the Speaker of the House of Representatives when the necessary 1990 census data has been received from the United States Census Bureau, loaded into the Subcommittee's computerized redistricting system, and verified as ready for use in redistricting. A redistricting plan will not be considered for adoption by the Senate or House of Representatives until the notice has been given.

TABLE 1

The starting point for drawing the plan which evolved into Chapter 246 was the group of districts identified as having significant minority populations--three House districts in Minneapolis, Districts 58B, 61A and 61B, one Senate district in Minneapolis, District 61, one House district in St. Paul, 65A, and the House district encompassing the White Earth and Red Lake Indian Reservations, District 2B. The districts ultimately enacted in Chapter 246 have total minority populations as follows:

District	Black	Indian	Asian	Hispanic	Total Minority
61	29%	9%	7%	3%	48%
2B	0%	21%	0%	0%	21%
58B	47%	4%	11%	2%	64%
61A	20%	14%	8%	3%	45%
61B	37%	5%	6%	3%	51%
65A	32%	2%	14%	4%	52%

TABLE 2

Minority Districts - Minneapolis

District 58

	State Court	Federal Court
Total Minority Voting Age Population %	31.3	8.4
Black Voting Age Population %	23	4
Indian Voting Age Population %	2	2

District 59

	Federal Court
Total Minority Voting Age Population %	49.8
Black Voting Age Population %	37
Indian Voting Age Population %	4

District 61

	State Court	Federal Court
Total Minority Voting Age Population %	39.1	20.7
Black Voting Age Population %	24	7
Indian Voting Age Population %	7	5

TABLE 3

Legislative Plan Comparison

3-1. Population Equality[1]

	State Court	*Federal Court*
SENATE		
Overall Range	3.42%	1.19%
Mean Deviation	.69%	.15%
HOUSE		
Overall Range	5.90%	1.40%
Mean Deviation	.96%	.19%

---

1 *See Board of Estimate v. Morris*, 109 S.Ct. 1433, 1442 (1989); *Brown v. Thomson*, 462 U.S. 835, 843-46 (1983); *Karcher v. Daggett*, 462 U.S. 725, 740-41 (1983); *Connor v. Finch*, 431 U.S. 407 (1977); *Gaffney v. Cummings*, 412 U.S. 735 (1973); *White v. Regester*, 412 U.S. 755 (1973).

Table 3 continued

3-2. **Minority Districts**[2]

	State Court	*Federal Court*
SENATE		
Districts over 30% minority Voting Age Population	3	2
Largest minority Voting Age Population %	39.1	49.8
Largest Black Voting Age Population %	24	37
Largest Indian Voting Age Population %	9	11
Largest Asian Voting Age Population %	7	8
Largest Hispanic Voting Age Population %	7	7

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2 *See Thornburg v. Gingles*, 478 U.S. 30 (1986); *MacNeil v. Springfield Park Dist.*, 851 F.2d 937 (7th Cir. 1988); *Quilter v. Voinovich*, No. 91CV-2219, 1992 WL _____ (N.D. Ohio Jan. 31, 1992); *Turner v. Arkansas*, No. LR-C-91-295, 1991 WL 316875, *9-24 (E.D. Ark. Nov. 15, 1991); *Hastert v. Illinois State Bd. of Election Comm'rs*, 777 F. Supp. 634, 645-55 (N.D. Ill. 1991); *Armour v. Ohio*, 775 F. Supp. 1044 (N.D. Ohio 1991); *Wilson v. Eu*, No. S022835, 1992 WL 12071, *3-6, *8-13 (Cal. Jan. 27, 1992).

HOUSE		
Districts over 35% minority Voting Age Population	4	3
Largest minority Voting Age Population %	55.0	54.9
Largest Black Voting Age Population %	42	42
Largest Indian Voting Age Population %	17	14
Largest Asian Voting Age Population %	9	9
Largest Hispanic Voting Age Population %	10	11

Table 3 continued

3-3. Political Subdivisions Split[3]

	State Court	*Federal Court*
Counties	62	65
Cities	50	46
Towns	9	12
Unorganized Territories	3	0
Precincts	172	201

3-4. Compactness[4]

	State Court	*Federal Court*
Perimeter-Length in Miles (shorter is better)		
Senate	9,909	10,316
House	13,331	13,286
Polsby-Popper Test (higher is better)		
Senate	.404	.398
House	.415	.441

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3 *See Brown v. Thomson*, 462 U.S. 835, 843-46 (1983); *Karcher v. Daggett*, 462 U.S. 725, 740-41 (1983); *Mahan v. Howell*, 410 U.S. 315 (1973).

4 *See Stone v. Hechler*, No. 91-0110-E, 1992 WL 14671 (N.D. W. Va. Jan. 7, 1992), and Polsby & Popper, The Third Criterion: Compactness as a Procedural Safeguard Against Partisan Gerrymandering, 9 YALE L. & POL. REV. 301 (1991), for an explanation and critique of these measurements. *See also Karcher v. Daggett*, 462 U.S. 725, 756 n.19 (Stevens, J., concurring) (1983); Minnesota Constitution, Art. 4, § 3; *Wilson v. Eu*, No. S022835, 1992 WL 12071, *7 (Cal. Jan. 27, 1992); *Jamerson v. Womack*, No. HB-880 (Cir.Ct. of Richmond, Va. Jan. 8, 1992); *In re Legislative Districting*, 299 Md. 658, 475 A.2d 428 and cases cited therein at 436-40 (1982).

Table 3 continued

3-5. Incumbents Paired[5]

	State Court	*Federal Court*
Senate		
DFL	5	7
IR	3	10
House		
DFL	12	31
IR	12	24

3-6. Packing[6]

	State Court	*Federal Court*
Senate		
Over 60% DFL[7]	15	14
Over 60% IR[7]	3	3
House		
Over 60% DFL[7]	33	31
Over 60% IR[7]	10	8

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5 *See Illinois Legislative Districting Comm'n v. LaPaille*, No. 91-C-6318, 1992 WL 13882, *3 (N.D. Ill. Jan. 24, 1992); *Republican Party v. Wilder*, 774 F. Supp. 400 (W.D. Va. 1991).

6 *See Davis v. Bandemer*, 478 U.S. 109, 117 n.6 (1986); *Thornburg v. Gingles*, 478 U.S. 30, 46 n.11 (1986); *Hastert v. Illinois State Bd. of Election Comm'rs*, 777 F. Supp. 639, 646-47 (N.D. Ill. 1991).

7 Dukakis-Bush 1988 presidential race, used by appellees as their base line race.

Table 3 continued

3-7. Proportional Representation[8]

	Simple Majority	*Base Line*[9]	*State Court*	*Federal Court*
Senate DFL	34	36	40	37
House DFL	68	71	75	77

[8] *See Davis v. Bandemer*, 478 U.S. 109, 130-43 (1986); *Hastert v. Illinois State Bd. of Election Comm'rs*, 777 F. Supp. 634, 655-59 (N.D. Ill. 1991).

[9] 53.6% Dukakis statewide, 1988.

TABLE 4

Congressional Plan Comparison

4-1. Population Equality[1]

	SF 1597	*Federal Court*
Overall Range	1 person	1 person

4-2. Political Subdivisions Split[2]

	SF 1597	*Federal Court*
Counties	10	8
Cities	13	23
Towns	5	2
Unorganized Territories	0	0
Precincts	16	16

[1] *See Karcher v. Daggett*, 462 U.S. 725 (1983).

[2] *See Karcher v. Daggett*, 462 U.S. 725, 740-41 (1983).

Table 4 continued

4-3. Compactness[3]

	SF 1597	*Federal Court*
Perimeter-Length in Miles (shorter is better)	4,093	4,006
Polsby-Popper Test (higher is better)	.355	.346

4-4. Incumbents Paired[4]

	SF 1597	*Federal Court*
DFL	0	0
IR	0	0

[3] *See Stone v. Hechler*, No. 91-0110-E, 1992 WL 14671 (N.D. W. Va. Jan. 7, 1992), and Polsby & Popper, The Third Criterion: Compactness as a Procedural Safeguard Against Partisan Gerrymandering, 9 YALE L. & POL. REV. 301 (1991), for an explanation and critique of these measurements. *See also Karcher v. Daggett*, 462 U.S. 725, 756 n.19 (Stevens, J., concurring) (1983); Minnesota Constitution, Art. 4, § 3; *Wilson v. Eu*, No. S022835, 1992 WL 12071, *7 (Cal. Jan. 27, 1992); *Jamerson v. Womack*, No. HB-880 (Cir.Ct. of Richmond, Va. Jan. 8, 1992); *In re Legislative Districting*, 299 Md. 658, 475 A.2d 428 and cases cited therein at 436-40 (1982).

[4] *See Illinois Legislative Districting Comm'n v. LaPaille*, No. 91-C-6318, 1992 WL 13882, *3 (N.D. Ill. Jan. 24, 1992); *Republican Party v. Wilder*, 774 F. Supp. 400 (W.D. Va. 1991).

Table 4 continued

4-5. Packing[5]

	SF 1597	*Federal Court*
Over 60% DFL[6]	2	2
Over 60% IR[6]	0	0

4-6. Proportional Representation[7]

	Incumbents	*Base Line[8]*	*SF 1597*	*Federal Court*
DFL	6	4	4	4
IR	2	4	4	4

[5] *See Davis v. Bandemer*, 478 U.S. 109, 117 n.6 (1986); *Thornburg v. Gingles*, 478 U.S. 30, 46 n.11 (1986); *Hastert v. Illinois State Bd. of Election Comm'rs*, 777 F. Supp. 639, 646-47 (N.D. Ill. 1991).

[6] Dukakis-Bush 1988 presidential race, used by appellees as their base line race.

[7] *See Davis v. Bandemer*, 478 U.S. 109, 130-43 (1986); *Hastert v. Illinois State Bd. of Election Comm'rs*, 777 F. Supp. 634, 655-59 (N.D. Ill. 1991).

[8] 53.6% Dukakis statewide, 1988.

TABLE 5

Parallel Redistricting Proceedings

State Court	Federal Court
Cotlow v. Growe, No. C8-91-985 (Minn. Spec. Redis. Panel, filed Jan. 24, 1991)	*Emison v. Growe*, No. 4-91-202 (D. Minn., filed Mar. 18, 1991) *order vacated sub nom. Cotlow v. Emison*, No. 91-1084 (U.S. Jan. 10, 1992) *Benson v. Growe*, No. 4-91-603 (D. Minn., filed Aug. 9, 1991) (consol. with *Emison*)
Mena v. Richards, No. C-454-91-F (332nd Jud. Dist., Hidalgo Co., Tex., filed June 17, 1991)	*Terrazas v. Slagle*, No. A-91-CA426 (W.D. Tex.) (on appeal to this Court as *Richards v. Terrazas*, No. 91-1270, docketed Feb. 5, 1992)
Wilson v. Eu, No. S022835 (Cal., filed Sept. 6, 1991)	*Members of the California Democratic Congressional Delegation v. Eu*, No. C 91-3383 FMS (N.D. Cal., filed Oct. 21, 1991)
Voinovich v. Ferguson, No. 91-1882 (Ohio, filed Sept. 19, 1991)	*Quilter v. Voinovich*, No. 91CV-2219 (N.D. Ohio, filed Nov. 1, 1991)
People ex rel. Burris v. Ryan, No. 72662 (Ill., filed Oct. 11, 1991)	*Illinois Legislative Redistricting Comm'n v. La Paille*, No. 91 C 6318 (N.D. Ill., filed Oct. 4, 1991)
Andrews v. Legislative Reapportionment Comm'n., No. 190 ED Misc. Dkt. 1991-Consolidated (Pa., filed Dec. 12, 1991)	*Harrison v. Legislative Reapportionment Comm'n*, No. CA-92-CV-0603 (E.D. Pa., filed Jan. 30, 1992)

SENATE REDISTRICTING COMMITTEE
March 27, 1991
123 State Capitol
1:00 p.m.

Minority Group Testimony

Transcribed by Mary Hennessy
Committee Secretary

SEN. MOE: Members, be seated. That, just in terms of the individuals who are going to testify, obviously, a major concern we have on this redistricting, has to do with the minority population in the state. And last week or last meeting we had ten individuals testify and today we have scheduled a few others. So I'd like to call on them in the order that they're listed on your agenda. First of all, Mr. Lester Collins. Is Mr. Collins here? Mr. Collins is not here.

Secondly, Mr. Roger Head of the Indian Affairs Council. Mr. Head.

MR. HEAD: Good afternoon, Mr. Chairman and members. I'm Roger Head. I'm Executive Director of the Minnesota Indian Affairs Council. The Minnesota Indian Affairs Council was created by the legislature in 1963 to address the issues facing American Indians in the State and to act as a liaison between the state and tribal governments. I want to thank you for the opportunity to testify before your committee today and to specifically address the issue of redistricting and the effects of redistricting on the Indian people, particularly those on the 11 Indian Reservations in the State. As many of you are aware, in 1990 preliminary

census figures indicated rapid growth in our American Indian population. In 1980 the census figures were 34,831, and in 1990 the figure rose to 49,900. This represents a 43% increase in the recorded population figures. This increase in the population has been attributed to an increased birth rate, mobility from other states to our state and an increased awareness and sense of pride in identification of being an American Indian which was also reported in the major metropolitan newspaper within the last couple of weeks.

I must remind you that this identification is also an affirmation of the recognition of one's tribe. We are not considered as individuals as much as we are a political entity with a special relationship to the federal government and the state recognition of the relationship.

Redistricting is a political concept that does not recognize this relationship of tribes as distinct political entities, and, in fact, diminishes this authority by creation of boundaries that divide and dilute tribal authority under this political concept. How does this translate? Indian people are not provided the opportunity to participate in real opportunities for representation at the local government level, meaning county boards, city councils and the like. Given the opportunity for participation as an elected official, we can provide the leadership and understanding that is often overlooked and becomes an issue to address to the legislature or courts. Meaning that, I think we can see county governments come and talk about what they perceive as an Indian problem, they have no one to deal with, no one they can work with, and no one they can talk to, and that's a perception. The Minnesota Indian Affairs Council has utilized its unique mission to act as a liaison

between the state and local government. If redistricting isn't serving the purpose of all its constituents and with appreciation of all the issues, redistricting won't get the attention and support of the Indian people in this state. You at the legislature have the opportunity to get this attention and support when you consider the tribes and their political status in this redistricting procedure. I want to thank you.

SEN: MOE: Any questions of Mr. Head?

SEN. BENSON: Can you explain to me, I have a quick question. I don't want to take a lot of the committee's time, but, can you explain to me please, I'm not that familiar with the organization, tribal organization and those kinds of matters, but evidently they elect people to tribal councils, some governing body within the reservation or whatever, is that correct?

MR. HEAD: Mr. Chairman, Senator Benson, that is correct. We have, with the 11 reservations in the state we have elections that have a chairperson and secretary-treasurer and council members with districts. The major reservations in the state that comprise the Minnesota Chippewa Tribe have identical schemes which they elect which is a chairperson, a secretary-treasurer and four district people. The Red Lake Reservation that I am from is a little larger with a chairperson, a secretary-treasurer and representatives. The Dakota reservations and the southern tier of the state is basically the same as the Minnesota Chippewa Tribe, with the chairperson, secretary-treasurer and council representatives.

SEN. BENSON: How often do you redistrict?

MR. HEAD: Mr. Chair, Senator Benson, about every 10 years they are looked at in redistricting. In the past those numbers have remained fairly constant.

SEN. BENSON: Have district boundaries changed?

MR. HEAD: In some instances some have. Many remain the same. Mr. Chairman, there's another point. People who leave the reservation do not lose their right to vote. They vote no matter where they move to, whether it be California, the Twin Cities or any other place. They vote but they must vote in that original district. They can vote for leadership of the reservation, the tribal chairperson, secretary-treasurer, but they must go back to their original district when they vote. So that makes it very difficult when redistricting questions come up.

SEN. BENSON: Have you, when you're talking about the numbers of the Indians accounted for in the census, you highlighted the number reported. Did you mean to infer yourself that there was an undercount there or things like that?

MR. HEAD: We looked at the data and we used organizations like the Indian Health Board of Minneapolis. Their records throughout a year, I think it was 1987, indicate that a number of patients that they've seen throughout that year and judging 1987 to 1988, we think 49,000; its probably about 15 to 25%. We can't put our fingers on it, that's why we didn't mention it, we used that report. I guess that 60,000 may be the number. Real figures. I would guess we would be using those data. Labor statistics of the Bureau of Indian Affairs would be about 60,000.

SEN. MOE: Any other questions? Senator Pogemiller.

SEN. POGEMILLER: Sure. Mr. Head, with particular interest in the American Indian population in Minneapolis, which is fairly concentrated, are you, do you have any feedback from the community or do you have any suggestions or recommendations on considerations we might want to make regarding redistricting in Minneapolis with regards to that population? I think the largest American Indian population is 60A, District 60A - 4,700 and I am wondering statewide what...

MR. HEAD: Senator Pogemiller, Mr. Chairman, you realize that the shift in the Indian population is I think at 60A, it's called Philips neighborhood in Minneapolis. That is, they're also mixed with the other minority populations here, some Hispanic, Blacks and Asians.

SEN. POGEMILLER: Mr. Chairman, District 60A has currently 6,400 African Americans, about 4,700 American Indians, 2,800 Asians.

MR. HEAD: I think that my thoughts in drawing and using those populations, that data for redistricting, we have the opportunity to set an example for locals, the local governments also, in recognizing to the fact that we are a significant minority population in these areas. One example was in Red Lake, the reservation that I come from. Counties, when redistricting the county commissioner lines, used a little creek that I grew up near and split the reservation in half. And it was my thought, if they would have included, been inclusive in including the Indian people in those towns, so that

what you have is an Indian at the table looking at solutions to problems perceived or real and in doing that you find a solution.

SEN. POGEMILLER: Would you repeat that?

MR. HEAD: Be inclusive, be inclusive. I don't think we'd say that we want specific Indian districts, it's silly to say that because, Senator, it's a lot of hard work, getting elected...senator in senate district 4. But taking into account those population in those concentrated areas.

SEN. MOE: Any other questions of Mr. Head? If not, thank you very much.

SEN. DECRAMER: Excuse me, Senator, Mr. Chairman, when you look at the district lines, I think that might have been, are there any reservations that are split right now by legislative district lines in Greater Minnesota and other metropolitan areas like Leech Lake, is it cut in half by two districts, Red Lake or...?

MR. HEAD: Mr. Chairman, Senator DeCramer. I think there is in some instances. Leech Lake may be slashed in some areas. The biggest issue I would consider is economics. In Bemidji, with 11,000 population, is a mere 30 miles from the Red Lake Indian Reservation. Red Lake is in District 1. I mean senators and representatives, I believe are doing good work in representing the views of that Reservation very well. If you would tie us together with economics and force Bemidji and force Red Lake to work together on issues and for electing their senators and representatives, you may also find that that's an easier way to work. You

may find, as I said, it could be the real problem or Indian problem disappear.

SEN. DECRAMER: Has it ever been to your advantage to have it split, to actually have two legislators working on behalf of the interests of a particular reservation community at Red Lake? Was it ever to your advantage, the fact that the reservation is split because of everything you said, to have two people working on your behalf, that than say two members of the Senate rather than just one person?

MR. HEAD: Mr. Chairman, Senator Decramer. It may be, but the example in the past, bringing back the county commissioner lines, we've had no representation, so it means none as opposed to two voices or votes.

SEN. POGEMILLER: A follow up on the situation in Minneapolis with these numbers in concentration in District 60A. The large concentration of 4,700 in one area is also in with these other areas of population, 2,800 Asians and 6,400 African Americans. What if it were possible to separate those populations, would that be something positive? Or another, if the majority of the African Americans live in this part of the area and the majority of Indians live in this part, what you'd be your thinking on that with regards to having them in the same districts or separate districts, in terms of representation, what is your, do you have any thoughts on that?

MR. HEAD: Senator Pogemiller, I don't think that's possible. But I think the community has one thing that's positive and what's positive is keeping them together. The community has one thing in common and that is poverty. And keeping them together is

giving them the opportunity to elect and to have representation. It would bring a voice from that group. That would be the finest scenario. The other scenario is to cut it up in three areas–we have poverty and jobs in common.

SEN. POGEMILLER: In this sense, if someone could get enough of that population, a large enough voice in the district to.... Because they never really had enough, for about 15,000 with both of these groups, 30,000. Thank you.

SEN. MOE: Thank you very much Mr. Head for your testimony.

Before I call on the next speaker I just want to say that the Committee also contacted the St. Paul Urban Coalition and they indicated they did not have staff available to testify. The St. Paul Urban League and the Urban Coalition of Minneapolis, they've indicated that they support the positions of the other, of the four minority councils that would testify before us. And the Minneapolis Urban League indicated that they would call if they could make it. And as I indicated, we have contacted the Indian Affairs Council, the Spanish-Speaking Council, the Council on Black Minnesotans, and the Council on Asian-Pacific Affairs. With that, Mr. Albert de Leon, Executive Director for the Asian-Pacific Affairs will be called on.

SEN. POGEMILLER: I did have the opportunity to spend time, to represent the Senate a little bit, to attend a House hearing in North Minneapolis, at the Pilot Cities Regional Center, at which time the House took testimony with regards to, it was mostly African American population and there were several representa-

tives, so just to point out there was some Senate representation, there were some Asian-Pacific....

SEN. MOE: Mr. De Leon.

MR. DE LEON: Thank you, Mr. Chairman. Thanks to the members of the committee for inviting me. I'm am Dr. Albert De Leon, Executive Director of the Asian-Pacific Council in Minnesota. The redistricting issue is very high in our community. There is a newspaper article that was printed last night and the headlines include the 1991 redistricting. I guess it shows the affection of my community, they even put my picture in the newspaper so please don't throw it away. As you well know, the 1990 Council–there is another newspaper clipping that is being distributed to the Chairman and members of the Committee. We have 193% increase from 1980 to 1990, one of the highest percentages increases in the nation. That also reflected that we have about 7,000 to 8,000 Asian-Pacific Minnesotans. We do have an undercount though, of about 7,000 adopted children and 3,000 Amer-Asians. So this would bring us to about 83,000. And if we tend to reflect on redistricting, I was given the data which I'm sure was given to you by the demographer, and by just looking at the working sheets here it would seem to me that 65A House District has over, almost over 5,800 and I would think 66B has over 4,000. These are the higher rates of the population density of the Asian-Pacific population followed by 57B, is over 3,000.

One of the requests from our community, Mr. Chairman for this committee, perhaps we can assist you in holding town meetings. There are many members in our community who really don't know too much what redistricting means. We'd like to get a statement

from the Chair and we'd like to translate this into 12 Asian languages because of the interest to be involved and participate in the 1991 and 1992 elections. Of the new refugees that we have, 15%, for the first time will participate in the election process and we would like to do a better voter education program for them. Of the immigrant population, 25% who are now American citizens will be involved in the election process and would like to participate in the various caucuses and participate in the various campaigns. We want to assist in anyway so that they will be educated.

So the request that comes from our Council is that May is Asian-Pacific Month and we hope that we can do something during the month of May to kind of assimilate the information, how important it is and that the information or letter would come from the Chair, we would be glad to give some translation so that the Hmong, Vietnamese, Cambodian, Laotian, Philippine, Korean, and Chinese, Hmong and the other languages that we have. At this level, there is very little information, Mr. Chairman, sad to say, simply because I think we need to bring this committee closer to the communities that we serve and I thought maybe that a Town Hall Meeting would meet that purpose. And if there is any way that we can do it, sometime in the month of May onwards, and meet with the various communities because of the diversity, I think this would be very helpful to them. I'll be glad to answer any questions.

SEN. MOE: Any questions of Mr. de Leon?

If not, let me just say that I think that is an excellent suggestion. On behalf of the Committee I would be more than interested in working with you to not only help with things by explaining the redistricting process, but, to probably, that will have as many

explanations as there are committee members, of course. And I think it's the healthy thing about the process. And also, I think it would be good, a good process to engage into the whole political process and to use the committee in that, as a forum, I am more than willing and if the special designation of the month of May, that might be a good time. The earlier in the month would be better.

MR. DE LEON: Yes. Members of the Committee, we do not have any Asian-Pacific person in the legislature. Hopefully in six to eight years from now we will have somebody of our own sitting in your table to kind of illustrate that lesson of the old principle "no taxation without representation." So, we would like to rely on you to help to represent us. Chuck Hazama of Rochester is the only Asian-Pacific elected official and he said that it's very lonely and others should be participating.

SEN. MOE: Everybody at this table knows him.

DR. DE LEON: But we look forward to the Town Hall Meeting. As you well know, we have concentration of Asian-Pacific persons in the Twin Cities; we have St. Cloud, Rochester, Mankato. We have a large refugee population in Moorhead and also in Duluth. So when we look at the Town Hall Meetings, we are really looking at five or six meetings spread out during the next ten or twelve months and I think that's the best way to reach our community. Thank you.

SEN. MOE: Thank you for your testimony.

Mr. Lester Collins, from the Council on Black Minnesotans, welcome.

MR. COLLINS: I'd like this to be very brief. I am waiting to give testimony in the House on a particular bill. I thought I'd walk over to see what things we have here. Let me very briefly say, I share what comments I picked up as related to Dr. de Leon's testimony as relates to, I think yet our community, in particular it still does not have the knowledge and does not clearly understand the ramifications of the redistricting process. The Council itself will be holding meetings here and we'll be doing one jointly with the Metropolitan Advisory Council, the Minority Advisory Council and with the Council in terms of redistricting, but the concerns that I specifically have; I've been looking at the history of where this country is coming from. It comes from, particularly as it relates to the more adverse affects from redistricting when it's not done clearly, properly, with the kind of considerations it should be.

Having read your senate resolution, I guess you call it your concurrent resolutions, many of the concerns that I have, particularly towards the bottom of the page is what I'm looking at. It says the districts must not dilute the voting strength of racial and language minority populations and where concentration of a racial or language minority population makes it possible, the districts must increase the probabilities of members of the minority will be elected or must be elected. I read that quite a while ago, and I was quite pleased to see that kind of language within the laws and within a resolution. So those are the kind of concerns that I would bring to you, just to remind you that in term fracturing, and other kinds of things, not so much I don't think, with respect to the State of Minnesota particularly, states like Georgia, California and other

areas; there are more than enough examples of fairness in terms of how districts are made up. It certainly has not been what they should have done and I only urge you, and as I sit before your, to continue to do and adhere to what you have put into resolutions in terms of representation.

Let me do a little editorial as relates to the councils. I guess I would advise not only the members here but particularly the State Planning Department. I've been at a couple of hearings where presentations have been given and I have learned more than I ever could know had I not attended those meetings and I'm real concerned that we do take this information, particularly to the community, that they begin to understand, and again we've accepted it as a charge and as a responsibility that certainly has integrity and trust, any information that needs to out there. Many of the things that we do address at the council are not the types of things that at least necessarily today or tomorrow will make a strong difference, but I believe if we begin to educate our populations and our people now, or especially when we look at ten years from now, in terms of a census or just those kinds of things, that they will be more knowledgeable with the process actually.

Those essentially are the comments that I have on the basis of twenty other things that are running through my mind, as relates to being in 3 or 4 other places.

SEN. MOE: I believe we identify with what you're doing.

MR. COLLINS: And believe me, I know you do.

SEN. MOE: Are there any questions of Mr. Collins? If not,

SEN. POGEMILLER: I would just encourage you, in your dealing with folks when you are talking with them about redistricting, that any member of the community that is particularly interested in Minneapolis please have them contact me because I live in the northern part of the city and I may not be as familiar with the southern parts of the city as I might be so I would be eager to meet with or visit with anyone who has suggestions, block by block.

MR. COLLINS: I will certainly make that known, and again we are in the process of planning a conference in the very near future and redistricting is one of the key issues we are going to be dealing with. And again this is all the so-called communities of color, not necessarily the just the Afro American community, and it is an area where it certainly impacts us all, more in the past adversely, I believe, impacted the communities of color. I commend your effort and particularly your invitation to be here to speak today certainly is more than a step towards where we should be heading, in fact where we are going.

SEN. POGEMILLER: I don't believe you were in the room when I asked the question of Mr. Head with regards to the American Indian Community. In south Minneapolis we have a significant Indian population in the Philips neighborhood, I think the number is 4700 in 60A, in that same district I believe the number is slightly higher for the African American community, about 1,000 more. In 60A there are 6200 African Americans and 4500 American Indian, 2700 Asian, and the question I asked Mr. Head was, what was his thinking with regards to whether, if possible, we should try to separate those populations as we are drawing maps

or whether pulling those populations together in an overall district is beneficial. I'm not sure it's possible.

MR. COLLINS: I saw Roger in the hallway. I wish I'd known you asked him that question, because I'd have asked him what his answer was.

SEN. POGEMILLER: I'll tell you what he said, I think. And members can correct me if I'm wrong. I think that he said was that his sense was that there is a community of interest of poor people that he would think it might be beneficial to keep those populations together because they would then have a larger group among the larger white population. If you separate the populations you would then have smaller people-of-color populations percentage-wise in with white populations. I think that's what he said.

MR. COLLINS: My answer would be, having been in conversation with the community particularly, I was given a call regarding that concept or the theory of that happening and I guess it was that, in fact, those communities working jointly together certainly have or possess more power from the standpoint of being, my answer really would be that I sure would like to know what the community and what those individuals themselves kind of, you know, feel in terms of an answer to their question. So I guess I'm reluctant, theoretically. I'd say certainly those communities coming together, not along the lines, would be the way to go. On the other hand, any one of those communities could feel that that's quite the opposite of the direction it should go.

I live in Powderhorn. I don't live in Philips, but theoretically what I've heard and my concern is definitely more towards the whole

idea of not, you know, dividing them in the community, realizing the poor that it does possess..

SEN. MOE: Any other questions? If not, thank you very much Mr. Collins for your testimony.

Are there any others from any of the communities that are here today and wish to testify?

MR. WATTSON: (Senate Counsel) Mr. Chairman, members of the committee. Most of you may have seen what is included in your materials today. There are two maps on the minority populations and a map of the 87 counties and a separate map of the seven counties along with a table showing the total minority population that was used to make up those maps. These are again provided to the committee by the State Demographer, Mr. Gillaspie.

SEN. POGEMILLER: I am asking staff what their sense of this is, but it seems to me that when this is up on the computer in the next couple weeks, would it be possible to get a visual representation on a smaller scale block by block or census block by census block so we can look at the minority populations in a way that would help us draw those lines? I think there is a capability to do that.

SEN. MOE: I think that would be good. Where are we in terms of the capability in being able to do that?

MR. HAGEN: (Committee Administrative Assistant) Each of the caucus worksites will have a large portion of the data base loaded

onto the work site next week. At that time we should be able to begin to do that.

SEN. POGEMILLER: Mr. Chairman, at least in your part of the state and the two inner cities, that is one of the first things we need to take a look at is how we can draw the best districts as possible for those special populations, as a first step, so we don't get into a position of fracturing those populations.

SEN. MOE: O.K. Also on the agenda you have indicated further discussion on the resolutions and so I've got a couple of points that have been brought up before and one of them stated, I want to break in about 15-20 minutes, so we won't take final action, but I did want to bring this up again so that if there are any other concerns that you notice in your reviewing of these resolutions and discussion here that we have had since we first brought them before the Committee that we could ago over them.

(discussion of other topics omitted)

MINNESOTA SENATE
May 16, 1991

S.F. No. 1571
Senator Pogemiller's Explanation
Impact on Minorities

Transcribed by Faegre & Benson

SEN. HUGHES: Senator Pogemiller.

SEN. POGEMILLER: Thank you Mr. President. Members, Senate File No. 1571 can be found on senate printed page 671.

As Senator Moe mentioned, Article 4 of the constitution requires the state legislature to redistrict itself after every census. That is our duty and it is our task. Its a difficult task because it deals with individuals and political careers of the members who we have all become friends and colleagues with. But regardless of the difficulty, we must keep in mind that redistricting and a redistricting plan is not to be drawn for legislators. Redistricting should be drawn for the citizenry, for communities, for towns, for communities of interests, for people of color, for opportunity for them, for fairness and for numerical equality. Justice Earl Warren says that achieving a fair and effective representation for all citizens is the task, the basic aim of redistricting.

Let me briefly talk about the process that has gone on with regards to this. Senator Moe has set up a several groups that have worked in this area. Obviously there is a policy committee on redistricting in the Senate chaired by Senator Moe. There was the bipartisan subcommittee on redistricting of the legislative commission and

. . . of which I served on since December. Former Senator Randy Peterson, Judge Peterson, sat on prior to me. Senator Storm is a member from the Senate also. The task of that group was to purchase the technology necessary for redistricting, technology that has been made available to each caucus of the state Senate and allowed the results that we will see tonight on the Senate floor by each caucus. The . . . in fall of 1989 a timetable was adopted whereby . . . which called for basically redistricting to begin by May 1 of 1991. At that time is was assumed that the census data would arrive about April 1, 1991. Fortunately, the census data have arrived about five weeks earlier and that made it possible to actually do the crunching of numbers with the technology to afford the opportunity for both caucuses tonight to present plans to the body. Public hearings were held by Senator Moe's redistricting committee and we took testimony from various groups. Some of the testimony by cities and counties, Citizen's League, League of Woman Voters urged that we take action early. They urged us to do or accept our constitutional responsibility to redistrict ourselves and not wait until the last minute when a plan would be rushed through under tremendous political pressure and would create . . . that would be like next March and would create a very difficult time for local communities to set processes in motion for redoing the boundaries of local cities and redoing the precincts and getting ready for the elections. So when Senator . . . when I was appointed to the committee, Senator Moe had a simple task, simple job for me and he said, "if possible, lets get redistricting done this year." Because the data arrived early we were able to accomplish that. My hope is that the full Senate will agree, as our committee has, that a good, fair plan has been produced, one that would be good for the citizens of Minnesota.

The Senate will recall that we have adopted standards, a concurrent

resolution with the House, for legislative redistricting. Let me review those briefly. One of its standards was that . . . the Senate would be composed of 67 members. Another factor would be that the representative districts would not be divided . . . in other words it would be nested within the senate district. Another criteria was that we wanted to have no more than a 2% deviation from the ideal population of 65,500 . . . 65,300. We have accomplished that in this plan. The courts in general had said for legislative plans, if you are able to maintain a deviation within at least twice to three times of that, you're doing a good job. And . . . we've set a fairly strict standard and have accomplished that.

We also have a standard that the district should be composed of contiguous . . . should be composed of convenient contiguous territory. That's a constitutional requirement in our state constitution. In addition, we said that the . . . to the extent consistent with the other standards in this resolution, we would like the districts to be compact. The districts will be numbered in regular series, which they are in this plan. The districts are convenient and contiguous I believe and I believe they are also compact, as best as possible.

Very important feature of our resolution, that the districts must not dilute the voting strength of racial or language minority populations. And that the districts must increase the probability that members of the minority will be elected. This plan does that . . . we were very, very careful to consult on this issue with people from the community who know the voting patterns, who know the communities. And we did quite a bit of consultation and we believe we've come up with some real good districts that will afford the opportunity for, during the decade of the 1990s, increase

in the people-of-color representation in the state Senate.

Counties and other standards . . . counties, cities and towns should not be divided into more than one district except what is necessary to meet equal population requirements or to form districts that are composed with convenient contiguous territory. We have lived up to that standard. The key feature . . . a key feature of this plan as directed fairly specifically by the '82 court plan is that the major cities in the state, Minneapolis, St. Paul, Duluth, St. Cloud, Rochester are maintained fully with their population in senate districts and are only divided to the extent that is necessary to use up the additional population. For the city of St. Paul that means that there is one break of the boarder on St. Paul. And that is the break of 11,000 people. That's the number that St. Paul is over the ideal population for number of senate districts. In the city of Minneapolis there is one break. In the city of Duluth there is one break. So we believe that criteria of our standards is met.

Next criteria is that the districts should preserve communities of interest. This plan does that I believe. Particularly in neighborhoods in the state, particularly in the inner cities where we've been very, very careful to maintain neighborhoods as they recognize themselves in those communities. With regards to greater Minnesota, we've tried to keep together as best as possible towns and townships that view themselves as being a community of interest. In greater Minnesota, we have kept cities intact in most instances where their size dictates that they should not be split.

Let me then talk about the basic numbers of redistricting. According to census data there has been a shift of population in the state. And that shift dictates that greater Minnesota, the portion of

Minnesota outside of the seven county area, will have 2-1/2 less senate seats. In addition, the inner cities of Minneapolis and St. Paul will have one house seat less, roughly. That then means that suburban areas in the metropolitan area will have three additional senate seats. That's what the numbers say, that's the population shifts and that's what this plan does. There are three new senate seats in the metropolitan area in the suburban areas and that will afford the opportunity for greater representation in the suburbs in the state legislature. There was absolutely no attempt to deviate from that basic statistical fact. And each portion of the state that lost population has taken its hit, so to speak. It has taken the responsibility and its own portion of the state to . . . with regards to redistricting. That means that in the northeastern part of the state a senate seat is lost. That results in a combination of two current senate seats that combines two legislators currently sitting the the state Senate in Duluth. In addition, in this portion of the state we have combined or eliminated a senate seat, if you will, which combines two current city members of the state Senate. The districts as you know are numbered one across the state consecutively to 32.

If I could have some pages please. We have available for members and for the press a map that outlines the districts in this plan for greater Minnesota. The pages will distribute those. In addition I would like the pages, distribute these. With the map is coming an outline that gives for each senate district one through 67 a total population, a total numerical deviation from the 65,300 ideal and a percentage deviation. The largest district in the state would be district 16. The smallest district would be district 2. The deviation for those districts for districts 16 is 1.57 above and for district 2 1.85 below. The overall range is 3.42. That is a tremendously small deviation for overall range. The average

deviation is .66 for all senate districts. The average across the state for 67 senate districts is .66.

As I mentioned, the inner cities of St. Paul and Minneapolis population-wise have lost a roughly a house seat. For the city of Minneapolis the districts are numbered district 58, 59 through 63. The . . . all of those senate districts are totally contained in the city except for a rupture at the southern boarder with district 63 being a 60% Minneapolis district and a 40% Richfield district. That would leave you with a totally contained house seat in Minneapolis and a 80% suburban house seat and a 20% inner city house seat. With regards to the city of St. Paul, the population also dictates that there be one rupture of the boarder. That is done on the northern boarder of the city where 11,000 people are combined with the suburban Maplewood-White Bear Lake area. This would mean that you would have basically a 50,000 Senate . . . 54,000 suburban voters in that senate seat and 11,000 St. Paul voters.

Let me move then to the issue, while we have these maps up, of people of color voting opportunities. We have created three inner city districts for people-of-color opportunity. There is no guarantee, but my sense is that, if I could have some pages, my sense is that with these districts there will be a significant enhancement in representation in the state Senate within the next decade.

In St. Paul District 65, which is of a interesting shape, it is not the most compact district in the world, and that district has a total people-of-color population of 42%; 18% African American, 2% Indian, 13% Asian, 8% Hispanic. It includes the west side and the University/Dale area. Which University/Dale has a fairly significant African American, the west side has a fairly significant

Hispanic.

Moving to the city of Minneapolis, we were able to create two opportunities, state Senate opportunities. The first is District 61 in South Minneapolis, includes the neighborhoods of the Central neighborhood, the Philips neighborhood, the Whittier neighborhood, and it is a district that has 49%, nearly 50% people of color, 29% African American, 9% American Indian, 7% Asian, 3% Hispanic. Based on input from the community, there was a decision made to cut the district on the northern border at the freeway, a natural boundary, I-94 freeway. There is a fairly significant people-of-color population in Downtown Minneapolis. That's a fairly transient population, it does not vote very heavily. The . . . from the input we received from the community was that the opportunity for election probably was enhanced if you cut the border at the freeway and included more neighborhood areas where there are homeowners and longer-term rental. We did that. That does, I believe, percentage wise slightly brings down the total number for minority or people-of-color population, but that trade-off was determined based on input from the community as to what the reality and effective electability would be in the neighborhoods. It also allowed us to maintain the neighborhoods, many of which I've just mentioned, and provide identity for the district.

The second district is in the North Minneapolis area which is a very compact, nice district with natural boundaries, the Mississippi, Downtown, Hennepin Avenue basically and the city border. This district, District 58, has a 40% people-of-color population, 28% African American, 3% American Indian, 7% Asian and 2% Hispanic.

Lets put the statewide map up just briefly. One more area where a great deal of consideration was given with regards to the people-of-color population, and that's in the northwestern part of the state where you have three American Indian reservations. The determination based on input from communities of interest up in that part of the state was that in District 4 we would bring together the entire Leech Lake reservation. This map does that. That district . . . that reservation used to be split by two senate districts. We have now combined that into one senate district. In addition, District 2 will encompass two reservations. In the northern part, the Red Lake reservation and further south the White Earth reservation. Those two are totally contained senate District 2 and are also totally contained within one of the house seats in that area of the state. Again, based on input from the community, the decision was made to do the drafting in this particular fashion. We believe that that provides an opportunity for representation, and as members of the Senate know, the rough area of District 4 currently has an American Indian member of the . . . in the state Senate.

Lets move then to the suburban areas.

(discussion of other topics omitted)

SEN. HUGHES: Senator Storm is recognized.

SEN. STORM: Thank you Mr. President. Senator Pogemiller, first of all I want to thank you for the deep-willed kind of explanation and what I suspect has been a significant effort on your part to arrive at this particular point in the process for redistricting which is a major challenge and responsibility for the Legislature. I do have a couple questions. You frequently during

your presentation mentioned public input and the opportunity for the public to express themselves. Would you just tell us how much public input has there been into the plan that you described here this evening. My feeling was that there weren't many people of the public who even saw it before last evening when it was presented to the committee. Or was it presented to the public prior to that?

SEN. HUGHES: Senator Pogemiller.

SEN. POGEMILLER: Mr. President, Senator Storm, the redistricting committee and the . . . took a tremendous amount of input from the public during its public hearings, took input . . . and I should mention, I also attended some hearings that were offered by the Redistricting Committee in the House of Representatives. They allowed me to sit in on some of theirs, and I brought that information back to . . . Senator Moe. The hearings we heard from local officials and from citizens regarding what should be the principles and the standards by which we should do redistricting that resulted in the excellent set of standards that we did adopt jointly with the House. We heard from the elections . . . local election officials that we should try to do this as quickly as possible from the League of Woman Voters also from the Citizen's League and the various other good government groups. And we made a particular effort to surface what I termed at the time a people-of-color footprint for the inner city communities which basically outline census data by precinct of where the concentrations of those population were. We presented that publically weeks prior to any final determination of what the exact lines would be. We took input from people-of-color communities on those footprints and, as I mentioned during my presentation, we accepted input from those

communities as to precisely how to draw those districts.

I might say that myself, Senator Cohen, and several members of the other body met with groups of people-of-color communities representing the various nationalities and language groups, and discussed with them redistricting and what a plan should look like. And we listened to input and actually provided some on-hands or on-computer, if you will, input by those communities with regards to carving the lines for these districts.

In addition, I personally have reviewed input from members of the Senate, I would say roughly two-thirds the members of the Senate on maps that they provided with regards to general descriptions of . . . based on their populations gains and losses where they felt the communities of interest were in their general area that they would think would be natural for the districts in their area to combine. And I myself and staff tried to take into account as best we could that type of input from members of the Senate. And, in addition, as you know, there is a tremendous amount of kind-of informal discussion. I believe a great number of party people and activists have been in consultation with various members of the Senate to discuss this. And we've also tried to incorporate their thinking. I will say also, that staff has consulted with various communities when a line became of concern as to where a natural border might be. There was some staff consultation with local people with regards to that also.

So Senator Storm, I think there's been a great deal of input and there's never enough. The Legislature never has enough time to let all four million Minnesotans review each piece of work that we do. And my hope is that we've balanced the amount of input and

access to the concepts and ideas behind this plan and that this plan will stand the test of time. As more and more Minnesotans review the plan, I believe they will find it to be fair, equitable, and a plan that they can be proud of and that they can work their political will with in the next decade.

SENATE REDISTRICTING COMMITTEE
January 6, 1992
318 State Capitol
3:00 p.m.

S.F. No. 1597
Mr. Bill Davis' Testimony

Transcribed by Mary Hennessy
Committee Secretary

SEN. MOE: You know, in the interest of time while you're looking at that if I could, ah, Mr. Davis asked for a chance to testify as well. I'd like, since it deals with the Congressional Redistricting why don't you call Mr. Davis forward. Thank you.
Mr. Bill Davis.

MR. DAVIS:
Thank you Mr. Chair and members of this body. Ladies and gentlemen, my name is Bill Davis and I serve as the 1st Vice-President of the Minneapolis branch of the National Association for the Advancement of Colored People. I also serve as the Chair for the same association at the state level of the social action committee and as Chair of the Minnesota State Conference of the NAACP Political Action Committee. We have looked at your Congressional Plan for the State of Minnesota with special emphasis placed on the 4th and 5th Congressional District with concentration on the people of color reside. We had an opportunity at our meeting to review both the plan that was submitted as S.F. 1597 as well as the other plan that was submitted to the Federal Courts as well. After reviewing the -

plans and having a lengthy discussion at our meeting, it was the recommendation and unanimous vote to support the plan contained in S.F. 1597 which keeps essentially the Congressional Districts of 5th Congressional District on the west side of the Mississippi River and the 4th Congressional District on the east side of the Mississippi River. We also want to thank those individuals who were thinking in terms of combining the two for their magnanimous gesture, however, we felt that we prefer to leave it as is. We find that there is a combined 4th Congressional District and 5th Congressional District we have about 22% people of color population and in talking to our legal counsel in Washington, D.C. at the National office their sense was that it was an issue for us to decide at the local level. They didn't feel though that the national would intervene however, they would support us on our decision and as I indicated our decision is to support the plan that has been presented today by Senator Pogemiller. Again, it is our sense that the Congressional Districts remaining separate (inaudible) is appropriate for the balance of this century. We think it's important that people of color have an opportunity to create wards in their vested interests or congressional districts in their vested interests. In this particular situation we do not see that advantage at this particular time and as such we have gone on record in support of the plan as presented by Senator Pogemiller.

SEN. MOE: Thank you. Questions? Senator Knaak.

SEN. KNAAK: Was any of your deliberation at all influenced by presumably the (inaudible) records of the two incumbents that are currently in these two districts and any concern they had that a new plan might provide difficulties for them?

MR. DAVIS: Mr. Chairman. Senator. That was not part of our deliberation. There may be individuals that have been in that delegation and might have had that as part of their thinking however, that was not something that rose and was discussed by the group and taken into consideration in making our determination. We were purely looking at what made the most political or what made the most sense from a posture for the NAACP at this particular time. Ah, when we looked at the numbers and looked at the information presented we looked at the configuration proposed and the maps that merged the city of Minneapolis and west part of St. Paul together into one Congressional District, it did not engender any support from that body.

SEN. MOE: Any other questions? Thank you Mr. Davis.

MR. DAVIS: Thank you.

MINNESOTA SENATE
January 7, 1992

S.F. No. 1596
The Laidig Amendment

Transcribed by Mary Hennessy
Redistricting Committee Secretary

Sen. Laidig: Mr. President, Sen. Pogemiller, I've made the long trip from the SOB to the 3rd floor and as I have indicated we perhaps have not done as good a job legislatively as we done in the congressional redistricting. We need to do a better job and we are. At this point we are about 75% complete on a compact legislative plan. When that's complete we'll share that with you. The Senate Republicans will have an alternative plan and we've not done as good a job as we could have to this point. I'm sure it's frustrating. It's important to have things on paper and on maps. There is a particular concept we'd like to raise in the legislative arena. That's the issue we visited about privately and that is minority representation. Part of the debate has been waiting for an amendment that we discussed, I don't think its here and we can either wait for the copies or I can explain the concept you are familiar with, whatever your preference would be? O.K.

I've got a few hand outs here if you could just split them up. Two issues that our caucus will be presenting as an alternative in the legislative plan is we are working on a compact legislative plan. Trying to do legislatively what we've done in the congressional area. When I was asked to resume or to take over the responsibilities for the Senate redistricting. The first question was, where is the computer. I found out that our computer is in hands of the

federal court with the three masters. My next question is where is our staff person and that person has resigned or retired. So I came to this without a computer, without staff. So a slight disadvantage, we are now working off of the House Republican computer on a legislative plan. Today, Senator Pogemiller, we want to introduce a concept that the Senate Republicans feel strongly about, know that you are aware of, you've attempted to resolve it and to begin simply the concept that any legislative redistricting the idea of empowering and enhancing minority opportunities is important. As we talked earlier in the legislative plan our starting point will be one person one vote, next will be compactness to prevent gerry-mandering third our compact plan will reflect population shifts fourth, it will likely have two Senate Districts in Duluth and fifth, is an area that the courts have said, in order to enhance minority opportunities, you have some flexibility that you don't have, flexibility in deviation, population deviation and flexibility in the way the lines are drawn. What I have handed to you is a again is a concept and the amendment I understand is on its way.

The first is we have taken the city of Minneapolis and as best we can and obviously its an early concept and I'm sure that those who represent Minneapolis will understand some problems quickly and there are some problems. But the concept is within the city of Minneapolis, if you work hard you can enhance the opportunities for black Minnesotans to perhaps influence or elect a representative. I think its pretty clear that there are no black Senators. In St. Paul we have an opportunity to enhance the Asian influence. And so the amendment that's on its way does two things. If you look at the hand out that says Senate District populations. Along the left hand side District 58 - 62 are in Minneapolis, 64-67 are in St. Paul, gives you the total population, what the absolute deviation

would be under our amendment and then below that gives you an idea within the districts that we would draw differently, it gives you what would be the affect on Black, Indian, Asian, Hispanic, and others.

The second hand out sheet gives you an idea what happens in the House Districts in Minneapolis and St. Paul. May or may not be of importance to you. So again, the concept that we introduce today from the Senate Republicans in legislative redistricting is that the courts, after looking at one person one vote, compactness to prevent gerrymandering and prevent incumbents from dominating, population shifts, the next starting point is the ability to draw lines in the flexible that the courts have given us to draw these lines to truly enhance and empower minorities. As briefly as I could Sen. Pogemiller, that is the concept. I don't know if the amendment has arrived but we could continue to discuss it and whatever your preference might me.

Sen. Pogemiller: Mr. President, Sen. Laidig, would you yield Senator? Is this part of a full legislative plan? Do you have other pieces of this? Do you have the suburban areas and the greater Minnesota areas?

Sen. Laidig: Mr. President, my understanding and I'll look to the side when I respond. My understanding is that the greatest opportunity to follow the courts direction to enhance the opportunities comes within the cities of Minneapolis and St. Paul for black and asians. To make things simple today, and I don't think were going to get the complete amendment, Sen. Pogemiller, and if we don't we'll have to do something. What we did to make things fit with your plan, our amendment takes your description,

you plan, just goes into Minneapolis and St. Paul and makes the changes within those legislative Senate Districts.

Sen. Pogemiller: Is what you are saying is that you can take Minneapolis, St. Paul descriptions out of 246 and lay this in instead. That's correct?

Sen. Laidig: Yes.

Sen. Pogemiller: So, you do not have a legislative plan for the suburban areas or Greater Minnesota yet?

Sen. Laidig: Mr. President, Sen. Pogemiller, no we do not.

Sen. Pogemiller: Is this layout the same one that you have offered to the State Court?

Sen. Laidig: Mr. President, Sen. Pogemiller. The difficulty I think is that after I came into this process, I reviewed what my predecessor and others had negotiated with House Republicans and found that perhaps there was a better opportunity for our caucus. So no, the plan that was submitted to the State Court is a plan that I'm talking to caucus members that perhaps we can do better and no, this is a new idea.

Sen. Pogemiller: Is this the plan for the city of Minneapolis and St. Paul that you have offered to the federal court?

Sen. Laidig: Mr. President, Sen. Pogemiller, no it is not.

Sen. Pogemiller: So this is a third plan now. Not even a whole plan, its a partial plan. Mr. President, is this a plan that is accepted by the minority caucus in the House of Representatives?

Is this a plan you have agreement with the minority caucus in the House of Representatives?

Sen. Laidig: Mr. President, since both of us have served over there, I think that the traditions of the Senate are that our deliberations are foremost but breaking with tradition, no.

Sen. Pogemiller: Mr. President, finally, is this a plan that the Governor of the State supports and has part and parcel in designing?

Sen. Laidig: Sen. Pogemiller, can I preface my answer by saying under your plan, your district 61 has a black population of 29%, our plan has a district that is 43% black. That gave me cause to disregard the House Republican Plan,disregard what the Governor might do, but no the Governor has not indicated that this is a concept that he supports or would sign. But were not that far along. But no, I do not have that from him.

Sen. Pogemiller: Mr. President, Senator, is this a plan that you have reviewed with people of color and are affected? NAACP, the Asian Council. Is this a plan that has been reviewed by anybody?

Sen. Laidig: Mr. President, Sen. Pogemiller, that is an excellent question, the answer is no. My thinking though sir, is that we have until the 22nd of January in which to do a legislative plan.

But no, those are groups and individuals that I intend to go out and refine this concept. No it's brand spanking new and we want to you to see it for the first time.

Sen. Pogemiller: So, Sen. Laidig, this is the third plan now, not the same plan that your attorneys have put into the State Court not the same plan your attorneys have put into the Federal Court, its a plan that there is no agreement even with the minority caucus of the House. Is there agreement with the minority caucus in the Senate with this plan? Apparently the Governor has not had a chance to review it either. And in addition, it is a plan only for the cities of Minneapolis and St. Paul not for the suburban areas or Greater Minnesota. Senator, let me ask you this. Do you agree with the notion that has been promoted since about 1987 by Citizens League, Common Cause, all the good government groups, League of Women Voters all the local election officials, that we should do redistricting early? That we should try to get it done, certainly before the election but hopefully, before precinct caucus, would you agree with that notion?

Sen. Laidig: Mr. President, Sen. Pogemiller, yes I do.

Sen. Pogemiller: Mr. President, Senator, don't you think this is, aside from the merits, don't you think it's a little difficult to deal with, now the third plan, that is not even a plan that is supported by two of the major players yet? It may be, I don't know, but it isn't yet. Perhaps Senator, if you could get the Governor and the Republicans in the House to agree on this as a first step and then get a suburban plan that both caucuses and the Governor could agree to and then a rural plan that your Governor and both caucuses could agree to. If you could get all of that done before

we adjourn today and vote on final passage of this corrections bill that we could consider that on the Senate floor before we're done.

Senator is seems to me that we have, I'm not sure whether, I think this is a serious attempt by Sen. Laidig. I grant that you're new on the scene and you've done a lot of good work, apparently in the last two weeks. I wish you had come sooner. I don't know how we can. If this had merit Senator, I'd almost be tempted to say let's continue the process another three or four months on this. But on the, as you know Senator, I represent Minneapolis, I come from Minneapolis, Senator, Senator Laidig, Senator, and I don't know that we need to get into the merits of this because it's not a full plan. Has this language been reviewed by local government officials so we know it's correct? Is it correct that your plan puts Representative Jefferson and Representative Rice in the same district.

Sen. Laidig: Mr. President, yes it does.

Sen. Hughes: Senator Pogemiller, I was just commenting that we can get detailed and I understand the importance of the detail, the other body is in recess waiting for us. But we'll just remember that we'll keep plowing ahead.

Sen. Pogemiller: Mr. President: The answer was correct. This plan puts Representative Rice and Representative Jefferson in the same district. And is it also true that this plan, Mr. President, these are important questions I think the consideration of the members of the Senate.

Sen. Hughes: We understand that Senator Pogemiller, proceed.

Sen. Pogemiller: O.K. then Mr.President, Sen. Laidig, is it true that this puts Representative Mariani and Representative Orenstein in the same district?

Sen. Laidig: Mr. President, my information is no. One is in 64A and the other in 64B.

Sen. Pogemiller: O.K. then thank you. And is it true that it matches Representative Housman and Representative Vellenga in the same House district.

Sen. Laidig: Mr. President,I plead guilty. We have ignored incumbents so far and yes we have ignored some other incumbents.

Sen. Pogemiller: Mr. Chairman, I'll be very brief, this is the extend I want to discuss on this even though it's not a full plan. It's not just incumbents, I want members to vote against this amendment because its not a full plan, but in addition vote against it on the merits. Voting rights act straight up - you don't take an African American incumbent and put him in with a powerful committee chair into the same district. That does not enhance the opportunity for people of color. Even though the voting rights act doesn't specifically talk about women don't we have enough women in the legislature. Apparently not, because we are going to go out of our way with this amendment to put two women House members in the same district. The net effect of this is to eliminate a women from the legislature. I want to make it clear, there is no voting rights issue there, but doesn't common sense tell you that's counter to what's going on? Particularly when that other body just elected for the first time in the history of this state the first women speaker? Vote against this amendment on the

merits, vote against this amendment because it is not a full legislative plan.

Sen. Laidig: Mr. Pogemiller, I think we can do this pretty quickly, I have the amendment that Sen. Pogemiller and I have been talking about.

Sen. Hughes: The secretary will report the amendment.

Mr. Flahaven: Mr. Laidig moved to amend S.F. 1596 as follows, page 52, line 17, this is the A-4 amendment.

Sen. Laidig: Mr. President, I'll do it very quickly, this amendment deals only with the City of Minneapolis. Senator Pogemiller is right. This doesn't have the blessing of a whole lot of groups. There's been some new direction in the thinking of redistricting. I've made some suggestions. The purpose today is to suggest to the Senate, that between now and the 22nd of January when the federal district judge will hold its hearing, between now and then our caucus is going to work on compactness, population shifts and finally on minority representation through enhancement and empowering. We didn't have the time that we needed. I talked to Sen. Pogemiller before this session about what we are trying to do. Senate counsel has worked very hard in trying to get something to us. So today's vote, if you don't want to vote on the merits and you want to vote on the fact that its not complete, between now and the 22nd of January our caucus will have a legislative plan compact, disregards incumbents, prevents gerrymandering and it will enhance minority representation. It's a concept that were offering today to begin the process.

Sen. Hughes: The question occurs on the motion to amend. Roll call has been requested, the secretary will take the roll in respect to the amendment offered by Senator Laidig.

The secretary will close the roll. 21 Aye's and 45 No's the amendment is not adopted. 20 Aye's and 45 Nay's.

MINNESOTA HOUSE OF REPRESENTATIVES
January 9, 1992

S.F. No. 1596
The Knickerbocker Amendment
Impact on Minorities

Transcribed under the supervision of Lois Klostreich
Supervisor, House IR Administrative Support Staff

REP. KNICKERBOCKER: (continuing)

The other thing that this amendment does better than the proposed DFL bill is treat potential minority areas in a way that further increases their opportunity to elect minority members to the Minnesota Legislature. We are all obligated because of the case law that has come down in the last ten years to do what we possibly can to maximize the opportunity for minorities to increase their chances to elect one of their own, so to speak, to elective office. Under the DFL, plan a Native American or an Indian district is created in northern Minnesota that is about a 21% Native American, Second District about 9%, and so on. The Native American population is split under the DFL plan and concentrated under my amendment. We have created an American Indian or Native American legislative district that is 28% – 7% better than what the DFL have done. We have created a senate district that is around 16% Native American – about 5% better than what the DFL have done. Extending that kind of approach, even farther, you look at Minneapolis and the concentration of the Black community; the DFL has created a House district that has a maximum Black population of 47%. And a second, the Third Districts of 20% and 37% and in effect spread the Black population vote over three legislative districts.

We were able to draw a district in Minneapolis that better reflects an opportunity for Blacks to elect a member to the Legislature. We have two House districts under this amendment, one at 48% Black and one at 41% Black. What that means is that we have created a senate district of about 44-1/2% that is Black. We have given Blacks under this proposed amendment an opportunity to elect a member, not only to two House districts, but also to a senate seat. The DFL plan does not do that. I would stress the point that the proposal that you have before us in the form of this amendment does more for minorities in Minneapolis in terms of the Black community and other minorities, in St. Paul with the Hmong and Hispanic, and the Indian population in northern Minnesota.

We have very consciously tried to create opportunities for minorities and I think we have done that with this amendment to a far greater degree than what the DFL proposes to do.

(discussion on other topics omitted)

REP. RODOSOVICH: Madam Chair, Representative Knickerbocker. Then I would presume that your caucus is acting independently than of the Senate Independent Republican Caucus.

REP. KNICKERBOCKER: Madam Speaker, Representative Rodosovich. No, that is not a safe assumption to make. While all of us are independent, we have been in contact and worked through the Senate IR Caucus as well as it relates to legislative redistricting, and they are aware of this proposal. They are aware of the amendment. They are aware of what is being offered and they are aware of the fairness of this proposal, and I am sure there

would be bipartisan support for it if only all four caucuses could get together and start negotiating a legislative redistricting bill as we have been asked to do by the federal court panel.

REP. RODOSOVICH: Madam Chair, Representative Knickerbocker. In looking at the plan quickly, and I do appreciate that you provided a copy of that for me to take a look at before session started today, and I appreciate that. Am I to presume that this is the same plan that has been introduced into the federal court?

REP. KNICKERBOCKER: Madam Speaker, Representative Rodosovich. Yes.

REP. RODOSOVICH: O.K. So this isn't a variation then of any state court proceedings, it's the federal court. I mean, are we identical to the submission to the federal court? Is it similar? Is it a variation?

REP. KNICKERBOCKER: Madam Speaker, Representative Rodosovich. This plan, to the best of my knowledge, is exactly the same as that submitted to the federal court.

REP. RODOSOVICH: Madam Chair, Representative Knickerbocker. One question on the minority districts. One of the things that we take great pride in putting our package together is that we consulted with a number of members, people of color, a number of groups, NAACP–if this is the plan, members, that is submitted to the federal court, the NAACP, or at least Bill Davis of that organization, really doesn't think it does what you have told the members today. The one thing that I would like to point out also, members, is that the Native American district, I guess it is a

question, Representative Knickerbocker, in the Native American district that you have created that is better than ours in your opinion, does that include Senator Finn in that district or is he therefore displaced from that district?

REP. KNICKERBOCKER: Representative Rodosovich, Madam Speaker. Senator Finn is not matched up with anyone.

REP. RODOSOVICH: Madam Speaker and Representative Knickerbocker. Would Senator Finn be a resident of this Native American district?

REP. KNICKERBOCKER: Madam Speaker, Representative Rodosovich. I don't know.

(discussion on other topics omitted)

REP. JEFFERSON: Madam Speaker and members. I would like to speak to the amendment and some remarks that were made by Representative Knickerbocker. He implied by statement, although he did not say so, that this proposal has somewhat reached the approval of the NAACP. This absolutely is not true, and I would say that if this amendment were to pass, the NAACP would probably have them in federal court, have us in federal court the day the Governor signed the bill, and I will tell you why. If you look at District 56A, it takes in what is now within the city as the Fifth Ward and the Eighth Ward which have been represented by Black council members. These are the hearts of the two Black wards in the city. He spoke about the image of the wards in the city. That is true, but a ward is a single entity. A House seat is only part of a governmental body, and that is a senate seat. And

by combining what is now the Fifth Ward and the Eighth Ward into one senate seat, you give the influence of minority population to one senate seat. As it was laid out in the plan that was passed earlier, it shows a potential of electing minorities to two senate seats and four House seats. The proposal that is before you now limits that potential to one senate seat and two House seats, and that is compacting, and you would be in violation of federal law.

REP. KNICKERBOCKER: Madam Speaker, members. Rather than take the minority population and spread them over four districts, we have attempted to concentrate in two House districts and give minorities, Blacks in this case would be the largest minority group, in two House districts and a senate district, give them three opportunities to elect persons of color to the Minnesota Legislature. I did not say that this plan had the NAACP's approval, my point was in raising the issue in the article that the three wards which are smaller than a legislative district overlap the legislative district that we have drawn as the best opportunity to elect Blacks to the House and to the Senate. As I said before, I think this is the fact that we can do better for minorities and the fact that we do have an opportunity yet to revisit this issue in some sort of a bipartisan way. We can do a much better job for minorities in terms of increasing their chances of electing members, maybe even better than the amendment that is before us, but certainly better than the plan that we are proposing here this afternoon.

REP. JEFFERSON: Madam Speaker and members, Representative Knickerbocker. The statement you just made is also somewhat in error, that the federal court has shown that if you cannot create a majority of a particular racial minority in a district, then that

should no longer be a concern because you do then begin to impact this area and you limit the influence of that particular group and that is what you have done in this particular situation, you have limited the influence of the, in particular, Black vote to one senate seat instead of to the two senate seats that the proposal that we have already passed, has, and that is a problem. Thank you.

STATE OF MINNESOTA

SPECIAL REDISTRICTING PANEL

C8-91-985

Patricia Cotlow, Phillip Krass,
Sharon LaComb, James Stein, and
Theodore Suss, individually and
on behalf of all Citizens of
Minnesota similarly situated,

Plaintiffs,

and

John Walker, Howard Miller,
Don Sudor, and Nkajlo Vangh,

Plaintiff-Intervenors,

vs. **PROCEDURAL ORDER NO. 7**

Joan Growe, Secretary of State
of Minnesota; and Patrick H.
O'Connor, Hennepin County Auditor,
individually and on behalf of all
Minnesota county chief election
officers,

Defendants,

and

The Seventy-seventh Minnesota
State House of Representatives
and the Seventy-seventh Minnesota
State Senate,

Defendant-Intervenors.

Our rulings on the motions argued February 17, 1992 are influenced by events occurring after the hearing. Most significantly, the United States District Court issued an order adopting plans for both legislative and congressional redistricting and enjoining Minnesota election officials from accepting filings or conducting elections except in conformity with that plan. Emison v. Growe, No. 4-91-202 (D. Minn. Feb. 19, 1992). On February 21, 1992, the panel received a collective submission of plaintiffs, defendants, and defendant-intervenors urging this panel to complete a congressional redistricting plan that would take effect if the federal court's congressional plan is reversed. The panel also received a submission from plaintiff-intervenors urging the panel to dismiss or to stay consideration of congressional redistricting. On March 2, 1992, the panel received a copy of a notice of appeal to the United States Supreme Court in Emison v. Growe. In light of these events, we address the status of this litigation and rule on the pending motions.

I

Legislative Redistricting

This panel, on November 21, 1991, issued Findings of Fact, Conclusions of Law, and Preliminary Order For Judgment On Legislative Redistricting. On December 5, 1991, two days after the parties' final comments on that plan, the federal court enjoined

all parties from implementing or enforcing any state court redistricting order and stayed its effectiveness. Emison v. Growe, No. 4-91-202 (D. Minn. Dec. 5, 1991). This order also specifically enjoined the parties from participating in the state proceedings and purportedly enjoined this panel from going forward on a legislative or congressional redistricting plan.

On December 9, 1991, subject to the federal panel's injunction, this panel entered a final and appealable partial summary judgment under Minn. R. Civ. P. 54.02 on the state legislative redistricting plan. Cotlow v. Growe, No. C8-91-985 (Minn. Sp. Redistricting Panel, Dec. 9, 1991).

On appeal, the United States Supreme Court vacated the injunction. Cotlow v. Emison, ____ U.S. ____, (Jan. 10, 1992) (No. 91-1084). Pursuant to this panel's order of January 31, 1992, final judgment as to state legislative redistricting was formally entered in Hennepin County District Court. So far as this panel is concerned, no additional actions on legislative redistricting need be taken.

II

Congressional Redistricting

The judicial task of reviewing Minnesota's legislative and congressional redistricting has required a divided approach. Because the legislature had not yet voted on a congressional redistricting plan at the end of its 1991 regular session, we deferred substantive consideration of the issue until legislative and executive consideration was complete.

In our Final Order For Legislative Redistricting, we ordered submission of proposed plans by January 17, 1992. This later date was selected to allow the legislature full opportunity to enact congressional redistricting legislation and to spare the parties potential conflict in complying with the federal panel's injunction.

When the special session ended without enactment of a congressional plan and the appeal before the Supreme Court was dismissed, this panel scheduled and conducted a procedural and motion hearing on February 17, 1992 to review the status of congressional redistricting and to resolve two pending motions. The first of these motions, brought by plaintiff-intervenors, challenges this court's authority to engage in congressional redistricting. The second, brought by plaintiffs and joined by the defendants and defendant-intervenors, requests the adoption of the congressional redistricting plan passed by the legislature but vetoed by the governor. For reasons stated below, we deny both motions.

A. Plaintiff-intervenor's Motion to Dismiss or Stay

Since the earliest cases recognizing the justiciability of redistricting issues, courts have universally acknowledged that the process of drawing political boundaries is, fundamentally, a legislative function. See Baker v. Carr, 369 U.S. 186, 82 S. Ct. 691 (1962). When state political processes fail to redistrict in accordance with federal and state constitutional mandates, however, judicial intervention becomes both appropriate and necessary. Id. at 208-37, 82 S. Ct. at 705-20.

The jurisdiction of state as well as federal courts to preside over redistricting challenges has been recognized, and resolution of redistricting problems by the state judiciaries has been explicitly encouraged. Scott v. Germano, 381 U.S. 407, 85 S. Ct. 1525 (1965). As a general matter, nothing would preclude a state court from addressing congressional as well as legislative redistricting when the legislative process has failed to enact a constitutional plan. See, e.g., Wilson v. Eu, ___ Cal.2d ___ (Cal. Jan. 27, 1992); People v. Kerner, 32 Ill.2d 539, 208, N.E.2d 561 (1965).

The procedural posture of this case, however, must be considered. This panel is reviewing neither the effect of new

census data on the continuing validity of an existing, legislatively enacted redistricting plan, nor the constitutionality of a recently enacted plan, as was the case with legislative redistricting. The existing congressional districts were judicially drafted in 1982 and, plaintiff-intervenors contend, are therefore subject to the continuing and exclusive jurisdiction of the federal court. See LaComb v. Growe, 541 F. Supp. 145, 151, (D. Minn.), aff'd sub nom. Orwoll v. LaComb, 450 U.S. 966 (1982).

Notwithstanding this court's general jurisdiction over redistricting, the issue is whether, after an intervening census, a state court may review the continuing validity of a redistricting plan imposed by a federal court. We find no case law or authority directly on point.

The state of Minnesota is obligated under the state and federal Constitutions to redistrict congressional boundaries after each decennial census. U.S. Const. art. I, § 2; Minn. Const. art. IV, § 3; see also Wesberry v. Sanders, 376 U.S. 1, 84 S. Ct. 526 (1964). We have already determined that the Minnesota judiciary has a constitutional obligation to ensure compliance with these mandates.

All parties concede that, due to the population shifts of the past decade, the 1982 congressional redistricting plan no longer delineates districts of nearly equal population and is, therefore, unconstitutional. As it affects the voters, the source of an unconstitutional redistricting plan is not material. If the plan is invalid, a new plan must be adopted.

When a valid challenge has been brought, state courts cannot simply defer indefinitely to a potential federal court review. The inevitable population shifts and the intervening decennial census effectively limit the life of all redistricting plans. To ignore such facts and require state court abstention would unreasonably

restrict the state courts' authority to protect the people's voting rights under the state and federal Constitutions. Accordingly, we deny plaintiff-intervenor's motion to dismiss.

B. Jurisprudential considerations.

The federal panel has enjoined the implementation of any congressional plan other than its own. That order is now on appeal. Nonetheless, the existence of one court's review squarely raises the wisdom or the necessity of this panel proceeding farther. As Judge MacLaughlin observed in dissent in Emison, the people of this state should not be made to endure unnecessary court processes. Avoiding the potential confusion caused by multiple plans and minimizing costs are, therefore, significant concerns.

In an effort to resolve this litigation expeditiously, we have considered the feasibility of adopting the federal court's plan. Because no congressional plan was validly enacted into law, the latitude in formulating a court plan is significantly greater. The federal plan appears to have taken the submitted plans into account, although it most closely resembles the basic contours of the plan passed by the legislature but vetoed by the governor. The federal panel's plan also achieves nearly perfect population deviations.

Nevertheless, despite its apparent strengths, the federal panel's plan reaches population equality without sufficient regard for the preservation of municipal and county boundaries. This panel has been presented with a plan by the legislature that creates fifteen percent fewer splits while accomplishing the same population distribution.[1] Moreover, the boundaries created, particularly

[1] Plaintiffs have moved for the adoption of the legislature's plan, arguing (1) that it is the strongest evidence of state policy and is, therefore, entitled to deference; or, alternatively, (2) it is the best plan available. The vetoed plan is not state law and cannot be deemed to constitute state policy. See Duxbury v. Donovan, 272 Minn. 424, 432-33, 138 N.W.2d 692, 698 (1965). For this and other reasons set forth in this order, we deny the motion to adopt, in total, the legislature's plan.

those between the fourth and sixth districts, not only split municipalities unnecessarily but also lack compactness.[2]

Consequently, we decline to adopt the federal plan. Because Minnesota election officials are enjoined from accepting filings or conducting elections except in accordance with that plan, we also decline to impose, at this time, an alternative plan. We are fully prepared to release a congressional plan if and when such a course of action becomes appropriate.

BASED ON THE ENTIRE RECORD,
IT IS THEREFORE ORDERED:

1. Plaintiff-intervenors' motion to dismiss is denied.
2. Plaintiffs' motion to adopt immediately the congressional redistricting plan vetoed by the governor is denied.

Dated: March 3, 1992 **BY THE COURT**

Honorable Harriet Lansing
Honorable Kenneth J. Maas
Honorable William E. Walker

[2] We acknowledge that "compactness" is not constitutionally required. However, it has been adopted by this panel as a redistricting criterion and must be considered.

Supreme Court, U.S.
FILED
MAR 23 1992
OFFICE OF THE CLERK

No. 91-1420

In the
Supreme Court of the United States
October Term, 1991

JOAN GROWE, SECRETARY OF STATE
OF THE STATE OF MINNESOTA, et al.
Appellants,

v.

JAMES EMISON, et al.
Respondents.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

APPELLEES' MOTION TO DISMISS APPELLANTS' JURISDICTIONAL STATEMENT

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No. 91-1420

In the Supreme Court of the United States

October Term, 1991

Joan Growe, Secretary of State of the State of Minnesota, Patricia Cotlow, Phillip Krass, Sharon LaComb, James Stein, and Theodore Suss, individually and on behalf of all citizens of Minnesota similarly situated; Patrick O'Connor, Hennepin County Auditor, individually and on behalf of all County Auditors of the State of Minnesota; the Seventy-seventh Minnesota State House of Representatives; and the Seventy-seventh Minnesota State Senate,

Appellants,

vs.

James Emison, Judy Fairbanks, Marie Iverson, Ken Dean, Steve Castillo, Lew Freeman, and Yao Lo, individually and on behalf of all Citizen and Voters of the State of Minnesota similarly situated; Duane Benson, Terry Dempsey, Delores Hettig, Richard Harmon, David E. Peterson, E.M. Patricia Pidcock, and Frank Ringsmuth; and Mark Lundgren, Carver County Auditor, individually and on behalf of all County Auditors of the State of Minnesota,

Appellees.

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STATEMENT OF PURPOSE

This motion is brought to dismiss an appeal of an order and plans of legislative and congressional redistricting issued by a three-judge panel of the United States District Court for the District of Minnesota by an Order dated February 19, 1992.

STATEMENT OF FACTS

The underlying federal action is a consolidation of two separate cases involving numerous parties.[1] A three-judge panel of the United States District Court was formed on April 8, 1991, pursuant to 28 U.S.C. § 2284(a) (1988), in response to the first action brought March 18, 1991, by plaintiffs below, appellees here, James Emison, et al. ("the Emison appellees"). The complaint alleged that existing state legislative and congressional districts violated the Fourteenth Amendment to the United States Constitution and that existing legislative districts violated § 2 of the Voting Rights Act, 42 U.S.C. § 1973 (1988), and requested affirmative relief. See Emison v. Growe, Civ. No. 4-91-202, Amended Complaint (D.Minn., March 29, 1991) ("Emison Complaint"), App. at A-73-91.

A second federal action was filed on August 9, 1991, by

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[1]The representation of political interests was specifically noted by the federal court: "Throughout this litigation the Emison plaintiffs and the Benson plaintiffs, infra, have represented the interests of the Independent-Republican (IR) political party. The legislative intervenors represent the interests of the Democratic-Farmer-Labor (DFL) political party. The Cotlow intervenors are aligned with the interests of the defendant intervenors . . . ." See Emison v. Growe, Civ. No. 4-91-202, Memorandum Opinion and Order (D. Minn., Feb. 19, 1992) ("February 19 Order"), Appendix to Jurisdictional Statement (hereinafter "App. at A-_") at A-17 n.9.

plaintiffs below, appellees here, Duane Benson, et al. ("the Benson appellees").[2] The Benson appellees sought to have declared unconstitutional a vetoed legislative redistricting plan that became law as Minnesota Laws 1991, Chapter 246, after litigation determined the veto to be invalid on procedural grounds. See Benson v. Growe, Civ. No. 4-91-603, First Amended Complaint, (D. Minn., Aug. 9, 1991) ("Benson Complaint"), Supplemental Appendix (hereinafter "Supp. App. at Sa-__") at 63.

A state court action was commenced on January 24, 1991. See Cotlow v. Growe, C8-91-985, Complaint (Minn.D.Ct., Jan. 24, 1991), App. at A-174. The state court plaintiffs, whom the federal court found to be aligned with DFL interests, intervened in the federal action, and are among appellants here. See February 19 Order, App. at A-17 n.9.

The initial non-adversarial nature of the state proceeding is demonstrated by the parties' written stipulation to jurisdiction, standing, and substantive resolution of all legal claims short of final relief. See Cotlow v. Growe, MX 91-001562, Stipulation (Minn.D.Ct., Feb. 25, 1991), App. at A-192-195. The plaintiffs opposed intervention by parties representing other political interests until a July 26, 1991, pre-trial conference. See Cotlow v. Growe, MX 91-001562, Pretrial Order No. 1 (Minn. Spec. Redis. Panel, July 29, 1991), App. at A-198-201. The state proceeding included none of the federal plaintiffs.

The federal action also presented legal claims not pled in the state action. The state court pleadings contained no Voting Rights Act claim, and plaintiff-intervenors in that case consistently argued against the state court's jurisdiction to consider such claims. See Cotlow v. Growe,

[2]The Emison and Benson appellees are citizens from various geographical parts of the state of Minnesota, and include Caucasian, Native American, Asian-Pacific, African-American, and Hispanic voters. See February 19 Order, App. at A-14.

C8-91-985, Memorandum of Plaintiff-Intervenors Regarding Exclusive Federal Jurisdiction Over Voting Rights Act Claims (Minn. Spec. Redis. Panel, Oct. 7, 1991), Supp. App. at SA-107. Those pleadings also did not challenge the constitutionality of Chapter 246.

Following the initial pretrial conference before the federal court on July 22, 1991, appellant legislature moved the federal court to stay its hand in deference to a scheduled session of the state legislature in January 1992 or to the state court proceedings. The federal court unanimously concluded that applicable law required both the state and federal courts to defer to and to provide the legislature with an adequate opportunity to effect redistricting in its January 1992 session.[3] See Emison v. Growe, Civil No. 4-91-202, Memorandum Opinion and Order (D.Minn. Aug. 21, 1991) ("August 21 Order"), App. at A-106. However, the federal court retained jurisdiction to address any subsequent redistricting plan in light of voting rights claims alleged and to avoid the delay that would occur from likely appeal of any state court action following the January 1992 legislative session.[4] See id., App. at

[3]At the time of the motions, the state legislature was scheduled to reconvene in January 1992, specifically to address redistricting. In fact, appellant legislature asked the federal court to defer to the legislature, which represented that it would pass, and the Governor would sign or his veto would be overridden, valid plans for both legislative and congressional redistricting. See February 19 Order, App. at A-19-20. The federal court relied on these representations. See August 21 Order, App. at A-109.

[4]The federal court properly recognized that the state court would also have to defer to the legislative process given the requirements of Scott v. Germano, 381 U.S. 407 (1965). See August 21 Order, App. at A-115. Any appeal of a state court decision issued after the legislature met in its 1992 session would necessarily progress first through the Minnesota state appellate process and only then to the United States Supreme Court. See August 21 Order, App. at A-112, A-116. The federal court specifically noted the effect of the resulting appellate delay as grounds for asserting continued jurisdiction. See id.

A-112-118. The federal court appointed special masters to assist in developing contingent redistricting plans if the legislative process failed to produce valid plans by January 20, 1992. See id., App. at A-117. It denied appellant legislature's motion to abstain. In light of its determination regarding deference to legislative process, the court also denied a motion to stay the state court proceeding. Id.

Chapter 246 was found unconstitutional by the state court sua sponte on October 1, 1991. See Cotlow v. Growe, C8-91-985, Pretrial Order No. 4 (Minn. Spec. Redis. Panel, Oct. 1, 1991), App. at A-218-220, A-225. That court found that Chapter 246 violated the state and federal constitutions because of numerous defects, including noncontiguous districts. See id., App. at A-219-220. Nevertheless, without waiting for the legislature to reconvene in January 1992, the state court on December 9, 1991, issued a legislative redistricting plan. See Cotlow v. Growe, C8-91-985, Findings of Fact, Conclusions of Law and Order ("State Court Legislative Plan") (Minn. Spec. Redis. Panel, Dec. 9, 1991), App. at A-249. That plan essentially adopted proposed amendments to Chapter 246 that later were passed by the legislature but vetoed by the Governor.

The federal court also recognized the unconstitutionality of Chapter 246, citing "numerous infirmities, including excessive population disparities and noncontiguous districts." See February 19 Order, App. at A-43. Because of extensive defects in Chapter 246 and its perpetuation of Voting Rights Act violations, the federal court disregarded it in redrawing legislative districts. See id., App. at A-43, A-56; see also Emison v. Growe, Civil No. 4-91-202, Order Denying Stay (D.Minn., March 9, 1992) ("Order Denying Stay"), Supp. App. at SA-61. The federal court also drew new congressional districts. See id., App. at A-53. No other congressional plans have been enacted through the legislative process or ordered by any court

since the 1990 census. Appellants appeal the federal court's order issuing legislative and congressional plans.

ARGUMENT

Voting is a fundamental right because it is preservative of all rights. Harman v. Forssenius, 380 U.S. 528, 537 (1965). At issue here is the opportunity for Minnesota citizens to exercise fully their fundamental right to vote. The federal court has acted to protect that right by issuing plans of legislative redistricting with de minimis population deviations among compact districts that seek to enhance the voting rights of minorities.

There are essentially two issues on appeal: (1) whether the federal court erred in not deferring to a state proceeding that did not include all of the parties before the federal court and that did not have in the pleadings before it additional claims presented in the federal action; and (2) whether the federal court's findings of fact and application of law were clearly erroneous. Appellants hope to overturn validly-ordered federal court plans for legislative and congressional redistricting and to implement a state court plan of legislative redistricting because of perceived partisan advantage.

I. THE FEDERAL COURT ACTED PROPERLY IN EXERCISING ITS JURISDICTION AND IN NOT DEFERRING TO THE STATE COURT.

A. The Federal Court's Actions Were Entirely Consistent with Germano Deference While the State Court Violated Those Deference Requirements.

Scott v. Germano, 381 U.S. 407, 409-10 (1965), reflects the principle that the federal judiciary should initially defer to state efforts to adopt redistricting plans, acting only

when the state fails to adopt valid plans in a timely fashion. See also Upham v. Seamon, 456 U.S. 37, 41 (1982); White v. Weiser, 412 U.S. 783, 794-95 (1973); Reynolds v. Sims, 377 U.S. 533, 586 (1964). This Court stated in Weiser:

> From the beginning, we have recognized that "reapportionment is primarily a matter for legislative consideration and determination, and that judicial relief becomes appropriate only when a legislature fails to reapportion according to federal constitutional requisites after having had an adequate opportunity to do so."

Weiser, 412 U.S. at 794-95 (citation omitted).

Primary authority over redistricting lies with state legislatures and not state courts. See id. Germano does not establish a superseding state court jurisdiction in reapportionment cases. See Skolnick v. State Election Board of Illinois, 336 F. Supp. 839, 871 (N.D. Ill. 1971). Recognition of the role of state courts as the final expositors of state law "implies no disregard for the primacy of the federal judiciary in deciding questions of federal law." Harman v. Forssenius, 380 U.S. at 535.

The federal court by order required deference to the legislative process. See August 21 Order, App. at A-115. The federal court concluded that governing law required "both [the] state and federal courts to defer to the legislature to draw a valid redistricting plan unless the legislature fails to act in a timely fashion." See id.; see also Order Denying Stay, Supp. App. at SA-60.

The federal court alone deferred to the legislative process, allowing the legislature and the Governor full opportunity to enact valid redistricting plans, consistent with the holdings in both Germano, 381 U.S. at 409, and Smiley v. Holm, 285 U.S. 355 (1932) (Minnesota redistricting is performed by the legislative "process," involving both the legislature and the Governor).

In accord with Germano, the federal court issued plans only after the legislative process failed to validly redistrict by late January 1992. In doing so, the federal court considered the likelihood of appeal of state court plans through the state appellate process and the probable later appeal to this Court for final disposition and noted the inevitable adverse effects of such delay on 1992 elections. See August 21 Order, App. at A-112, A-116.

Also in accord with Germano, the federal court fully resolved all matters before it, including claims not before the state court, in an effort to provide an expeditious and complete remedy for all parties and to resolve fully all constitutional and federal voting claims before it.

By contrast, the state court ignored the principle of deference. It disregarded the federal court's unanimous August 21 Order and issued its own plan of legislative redistricting less than one month before the January 1992 legislative session. See State Court Legislative Plan, App. at A-249. The federal court recognized that such an order was necessarily advisory, premature, and a clear interference with the legislative process. See Emison v. Growe, Civ. No. 4-91-202, Order of Stay of All Proceedings Before the Minnesota Special Redistricting Panel in Cotlow v. Growe No. C8-91-985 (hereinafter "Order of Stay") (D. Minn., Dec. 5, 1991), App. at A-150-151. The state court disregarded the federal court's determination that in any event the federal court would have to review any redistricting plans issued because of the federal voting rights claims before it. Rather, the state court attempted to decide the validity of Chapter 246 under the Voting Rights Act even though no such claims were pled in that action. Further, the state court based its plan on a pervasively unconstitutional law and on legislative committee proposals for amendments that never were enacted.

The state court's issuance of a legislative plan

conflicted with the federal court's ordered deference to the legislative process. See id.[5] The federal court therefore issued an Order of Stay on December 5, 1991, "[deeming] it self-evident that the existence of the state district court plan could improperly influence and interfere with the legislative process." February 19 Order, App. at A-23.

The state court in December 1991 failed to defer to the legislative process, instead issuing a plan that could not timely be reviewed and that the federal court ultimately found perpetuated Voting Rights Act violations. The state's legislative process failed in January 1992 to establish legislative and congressional redistricting plans. Only in these circumstances did the federal court act, pursuant to Germano, "to enter such orders as it deems appropriate," including its plans of legislative and congressional redistricting. See Germano, 381 U.S. at 409.

B. Abstention by the Federal Court Was Not Warranted in Light of Voting Rights Claims Before It, and Only the Federal Court Was Capable of Resolving All Issues Raised by the Parties in Both Actions.

Abstention is a narrow exception to a federal court's duty to adjudicate a controversy properly before it,[6] particularly where voting rights issues are presented. In such instances, a court should abstain only in the most extraordinary circumstances. See O'Hair v. White, 675

[5]In contrast to the state court, the federal court had undertaken the process of preparing contingent legislative and congressional redistricting plans that were unannounced and to be implemented only in the event that the legislative process failed to enact valid plans by January 20, 1992. See August 21 Order, App. at A-117. Cf. Weiser, 412 U.S. at 794-95.

[6]The federal court had subject matter jurisdiction under 28 U.S.C. §§ 1331, 1343 and 42 U.S.C. § 1973. See February 19 Order, App. at A-16-17.

F.2d 680, 694 (5th Cir. 1982). This Court has expressed its reluctance to have federal courts defer to state courts in matters involving voting rights. In Harman v. Forssenius, 380 U.S. 528, (1965), a voting rights case, this Court found no abuse of discretion in the district court's refusal to abstain in favor of a state court. This Court stated, "the district court was thus faced with a claimed impairment of the fundamental civil rights of a broad class of citizens . . . . Given the importance and immediacy of the problem and the delay inherent in referring questions of state law to state tribunals, it is evident that the district court did not abuse its discretion in refusing to abstain . . . ." Id. at 537.

In this case, the federal complaints raised claims not before the state court. The Emison complaint alleged violations of the Voting Rights Act and sought affirmative relief. See Emison Complaint, App. at A-82-88. The Benson complaint raised several constitutional challenges to Chapter 246 and requested appropriate relief. See Benson Complaint, Supp. App. at SA-63. The federal court repeatedly stated that it could not abstain because of these issues unique to the federal action. See August 21 Order, App. at A-112-113; Order of Stay, App. at A-144-145; February 19 Order, App. at A-20-21 n.17.

The federal court resolved all outstanding issues by adjudicating claims that two separate groups of plaintiffs had chosen to bring before it. Once convened, "the jurisdiction of the district court so constituted . . . extends to every question involved, whether of state or federal law, and enables the court to rest its judgment on the decisions of such of the questions as in its opinion effectively dispose of the case." Sterling v. Constantin, 287 U.S. 378, 393-94 (1932).

Pendency of a state proceeding is not a reason for a federal court to abstain. See McClellan v. Carland, 217 U.S. 268, 281-82 (1910). To the contrary, this Court has emphasized "the virtually unflagging obligation of the federal courts to exercise the jurisdiction given them."

Colorado Riv. Water Conserv. Dist. v. United States, 424 U.S. 800, 817 (1976).

Appellants have identified no unique facts or issues supporting abstention. The federal court was the only court presented with Voting Rights Act issues and constitutional challenges to Chapter 246. The federal court properly resolved all issues before it, and, in so doing, it resolved all issues that were before the state court.

II. THE STATE COURT'S PLAN FOR LEGISLATIVE REDISTRICTING WAS NOT ENTITLED TO ISSUE PRECLUSIVE EFFECT.

Under the Full Faith and Credit Act, a valid and authenticated state judgment is entitled to full faith and credit in federal courts where the judgment would have preclusive effect under the state's laws.[7] See 28 U.S.C. § 1738; Marrese v. American Academy of Orthopaedic Surgeons, 470 U.S. 373, 380 (1985); 18 C. Wright, A. Miller, & E. Cooper, Federal Practice & Procedure, § 4469 at 659-60 (1981, supp. 1991). Where a second judgment inconsistent with the first is in fact reached, however, the second judgment prevails "whether the res judicata[8] effects of the first judgment were ignored by the parties or expressly rejected by the court in the second action." 18 Wright, Miller, & Cooper, § 4404 at 26 (citing authorities) (footnote added).

The state court's legislative redistricting plan was not offered by appellants as a judgment that would preclude legislative redistricting by the federal court. Where, as here, preclusion was not raised, giving effect to the second judgment is justified by the failure to argue preclusion. See id. at 26-27. Preclusion is an affirmative defense that is lost when not asserted. See id. at 26.

In any event, the state court's plan was not entitled to preclusive effect. Full faith and credit preclusion is governed by state law. See 28 U.S.C. § 1738; Marrese, 470 U.S. at 380. Under Minnesota law, application of issue preclusion is appropriate where (1) the issue was identical to one in a prior adjudication; (2) there was a final judgment on the merits; (3) the estopped party was a party or in privity with a party to the prior adjudication; and (4) the estopped party was given a full and fair opportunity to be heard on the adjudicated issue. See Ellis v. Minneapolis Comm'n on Civil Rights, 319 N.W.2d 702, 704 (Minn. 1982). Appellants mistakenly conclude that the state order should have had preclusive effect in the federal proceeding.

First, the issues in the federal proceeding were not identical with the ones involved in the state action. The federal action involved Voting Rights Act claims and challenges to Chapter 246 not raised by the pleadings in the state action. See Order of Stay, App. at A-144-145. The first Ellis factor is not met.

Second, appellants argue that there was sufficient identity between the state and federal parties because of similar legal representation. In Minnesota, the "appearance" of a party necessary to apply issue preclusion is clearly either an actual adversarial appearance in litigation of one's own rights, see Margo-Kraft Distrib., Inc. v. Minneapolis Gas Co., 200 N.W.2d 45, 47 (Minn. 1972), or the exertion of sufficient control over the action in furtherance of one's own interests, even though not a party,

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[7] Appellants separately argue "full faith and credit" and issue preclusion or "collateral estoppel." See Jurisdictional Statement at 11-13. Nevertheless, the preclusive effect of a state court's judgment in a federal proceeding is fully within the Full Faith and Credit Act, which, in turn, looks to the state's preclusion rules. See 18 C. Wright, A. Miller & E. Cooper, Federal Practice & Procedure § 4469 at 459-60 (1981, supp. 1991).

[8] As used by commentators, the term "res judicata" collectively refers to both "claim preclusion" and "issue preclusion." See 18 Wright, Miller, & Cooper, § 4402 at 6-7; see also Marrese, 470 U.S. at 376 n.1 (discussing this Court's use of the terms "claim preclusion" and "issue preclusion").

such that the non-party has effectively had its day in court, see Denzer v. Frisch, 430 N.W.2d 471, 473 (Minn. Ct. App. 1988).

Given this law, mere representation of some parties by the same counsel does not constitute an appearance for issue preclusion purposes, particularly where the federal proceeding included parties (i.e., the Benson appellees) neither involved in the state proceeding nor represented by counsel who appeared there. The presence in the federal action of the Benson appellees, who had no control over or other connection with the state case, prevents application of issue determinations made in that case to issues arising in the federal action. Cf. Ellis, 319 N.W.2d at 704. The third factor of the Ellis test is also therefore not met.

Finally, the Benson appellees had no "full and fair opportunity" to be heard on the adjudicated issues in the state proceeding, because they did not appear in that proceeding. There was a consistent challenge to the state court's jurisdiction to adjudicate Voting Rights Act § 2 issues at all, let alone to provide a full and fair opportunity that would serve as preclusion to parties not present in the state proceeding. See Cotlow v. Growe, MX 91-001562, Memorandum of Plaintiff - Intervenors Regarding Exclusive Federal Jurisdiction Over Voting Rights Act Claims (Minn. Spec. Redis. Panel, Oct. 7, 1991), Supp. App. at SA-107. Therefore, appellants have also clearly failed to meet the fourth factor of the Ellis test. Issue preclusion, because of all of these deficiencies, is manifestly not merited.

III. THE FEDERAL COURT ACTED PROPERLY IN ADJUDICATING THE VOTING RIGHTS ACT CLAIMS BEFORE IT, AND ITS ORDER WAS SUPPORTED BY THE EVIDENCE.

A. The Federal Court Had an Affirmative Obligation to Address the Voting Rights Act Claims Before It.

The Emison complaint alleged that legislative district boundaries on the Red Lake and White Earth Reservations and in Minneapolis violated Section 2(a) of the Voting Rights Act, 42 U.S.C. § 1973(a) (1988). The federal court therefore was obligated to determine "whether voting rights violations have been proven in this case." February 19 Order, App. at A-28.

The federal court also was required to ensure that any plan, whether enacted through the legislative process or issued by a court, provided adequate relief if Voting Rights Act violations were found. See August 21 Order, App. at A-116.

Appellants' contention that the state court properly addressed Voting Rights Act claims is meritless and would, if accepted, create dangerous precedent. Courts must not be permitted to make determinations of law and fact as to federal statutes without a case or controversy being raised by the pleadings. Further, to allow Section 2 of the Voting Rights Act to be enforced by elected state judges undermines the Act and jeopardizes the rights that it is intended to protect. The damage to the Act and to voting rights is particularly troublesome and creates potential for abuse if a state court can sua sponte issue an order that binds parties who have properly asserted Voting Rights Act claims in federal proceedings.

B. The Federal Court Properly Found Voting Rights Act Violations.

The factual findings of a district court are not to be set aside unless "clearly erroneous." Fed. R. Civ. P. 52(a). Appellants fail to demonstrate that the federal court's findings of minority voting rights violations were clearly in error.

1. The Federal Court Was Not Obligated First to Find That the Gingles Preconditions Were Met.

Appellants rely on Thornburg v. Gingles, 478 U.S. 30 (1986), a matter addressing multi-member districts, as requiring three preconditions for a finding of a Voting Rights Act violation. However, reliance on Gingles in this case, which involves single-member legislative districts, is misplaced. This Court in Gingles specifically noted that it had "no occasion to consider whether the standards we apply [to multi-member district vote dilution claims] . . . are fully pertinent to other sorts of vote dilution claims, such as . . . single member districts." Id. at 47 n.12.

2. The Evidence of Voting Rights Act Violations Clearly Was Sufficient.

Voting Rights Act § 2 provides that a violation is established if, judged on the totality of circumstances, the political election processes in a state are not open to equal participation by members of protected classes. See 42 U.S.C. § 1973(b) (1988). The Senate Judiciary Committee Report that accompanied the 1982 bill amending § 2 identified factors to be considered in determining the "totality of circumstances" that could show a violation of the Voting Rights Act within the meaning of § 2. S. Rep. No. 417, 97th Cong., 2d Sess. 28-29, reprinted in 1982 U.S. Code Cong. & Admin. News 177, 206-07 (hereinafter "1982 U.S.C.C.A.N."); February 19 Order, App. at A-31-32 (quoting factors).

The Senate Report's factors need not all be proven by plaintiffs, nor must a majority of the factors "point one way or the other." 1982 U.S.C.C.A.N. at 207. "The failure . . . to establish any particular factor is not rebuttal evidence of non-dilution." Id. at 207 n.118.

The federal court analyzed and applied the Senate Report's factors, found that legislative districts violated the Voting Rights Act, and determined that neither Chapter 246 nor the state court's similar plan corrected those violations. See February 19 Order, App. at A-31-41.

Most indicative of § 2 violations was the lack of minority representation in the Minnesota legislature. See id., App. at A-33-35. The only factor expressly mentioned in § 2 is "the extent to which members of a protected class have been elected to office in the State or political subdivision. . . ." 42 U.S.C. § 1973(b) (1988). The state senate currently has no minority members from Minneapolis, nor has a minority senator been elected from Minneapolis in recent history. See February 19 Order, App. at A-33. There is only one state representative from Minneapolis who is a member of a minority group, and Minneapolis has elected just two minority house members in the past decade. See id. Both were from the same district. See id.

The 1982 legislative districts, which did not include a "super-majority" minority senate district, resulted in election of no minority senators. See id., App. at A-33-34. These results are entitled to great weight as evidence of Voting Rights Act violations, because 1982 amendments to the Act sought to "make clear that certain practices or procedures that result in denial or abridgement of the right to vote are forbidden even though the absence of proof of discriminatory intent protects them from constitutional challenge." See id.

Minneapolis minority legislative representation is significantly below the proportion of minorities in the city's population. See id., App. at A-34. Proportional representation would entitle minorities to four seats of the eighteen available in Minneapolis districts. See id. Nevertheless, minorities have held just one seat in the past decade. See id. While proportional representation is not an entitlement under the Voting Rights Act, lack of proportional representation of minorities is one of the "circumstances" suggested in the Senate Report as indicating a § 2 violation. See 1982 U.S.C.C.A.N. at 206-07.

The federal court also observed that the only minority representative now in the state house of representatives

was elected from a super-majority minority district. See February 19 Order, App. at A-34-35. This suggests the representational effect that can be achieved by concentrating minorities in super-majority minority districts to allow the effective assertion of minority voting rights through enhancement of bloc voting. Cf. 1982 U.S.C.C.A.N. at 206-07.

A "super-majority" concentration can be achieved in a Minneapolis senate district. See February 19 Order, App. at A-35. This senate district, number 59 in the federal court's plan, concentrates minorities in proportions similar to those previously found to be effective in achieving minority representation in the state legislature.[9] See id. The super-majority minority district seeks to correct the historical lack of minority representation.

In findingVoting Rights Act violations, the federal court also relied upon the extent to which minorities in Minnesota bore the effects of discrimination in education, employment, or health. See id. The federal court noted recent judicial findings that the Minneapolis public school district had "acted intentionally to maintain or increase racial segregation in the schools." Id. (quoting Booker v. Special School Dist. No. 1, Minneapolis, 451 F. Supp. 659, 660 (D. Minn. 1978)). Minneapolis school district policies had been found to be "especially offensive due to

[9]Appellants suggest that such a district is opposed by "leaders of the Black community in Minneapolis. . . ."Jurisdictional Statement at 19 n. 12. But see Supp. App. at SA-231.

Appellants also suggest that the federal court failed to draw a true super-majority minority district because of voting age considerations. See Jurisdictional Statement at 16-17 & n.9; App. at A-381, A-383. Appellants fail to note that redistricting is based upon total population; that the data upon which they rely are now almost two years old; and that the plan presumably will be in effect for ten years. The federal court's plan in any event creates a district with a minority population fully ten percent higher than any minority district drawn by the state court. See App. at A-383.

defendant's knowledge of the extensive nature of housing segregation within its bounds." Id. (quoting Booker v. Special School Dist. No. 1, Minneapolis, 351 F. Supp. 799, 809 (D. Minn. 1972)) (emphasis added).[10]

The federal court found that the legislative districts created by Chapter 246 and by the state court plan reflected "voting practices or procedures that may enhance the opportunity for discrimination . . .," another of the Senate Report's factors. See id. , App. at A-35-36; Order Denying Stay, Supp. App. at SA-61. ("[T]he plan proposed by [appellant legislature] and adopted by the state court is not only gerrymandered to protect incumbents in Minneapolis, foretelling the continued dilution of minority voting rights, but it also contains unwarranted population deviations and lacks compactness statewide" (emphasis added)).

The federal court found that Chapter 246 was designed "to protect incumbents in the city's overwhelmingly white legislative delegation." February 19 Order, App. at A-36. Of eighteen Minneapolis legislators, Chapter 246 paired no incumbent senators; house members were paired only once. See id. The federal court stated that incumbent pairing should have been inevitable in light of the population decline in Minneapolis. See id., App. at A-36 & n.37. The court concluded that this avoidance of incumbent pairing

[10]Appellants challenge the federal court's reference to a newspaper publication article reflecting continued performance gaps between minorities and whites in the Minneapolis school district. See Jurisdictional Statement at 19-20. It is clear from even a cursory reading of the federal court's February 19 Order that the court's primary reliance was on express judicial findings made as recently as 1978. See February 19 Order, App. at A-35.

Appellants additionally criticize the federal court's reference to Minnesota's history of official discrimination, see Jurisdictional Statement at 19, but they fail to note that the court expressly did not rely on that history, see February 19 Order, App. at A-36 n.35. It is clear both from the federal court's language in footnote 35 and its ultimate conclusions that the court instead relied on other sufficient evidence of Voting Rights Act violations. See id. at A-36 n.35, A-38.

was apparently done in "priority over the protection of minority interests in the plan proposed by [appellant legislature]." Id., App. at A-36.

Incumbent protection by Chapter 246 and the state court's plan, see id., App. at A-36; Order Denying Stay, Supp. App. at SA-61, was clearly not "state policy", see February 19 Order, App. at A-36-37 n.37. To the contrary, state policy found in a joint legislative resolution calls for avoidance of dilution of minority voting strength and for increases in the probability of election of minority legislators. See id.

Incumbent protection is a voting practice and procedure that enhances the opportunity for discrimination against minorities. See id., App. at A-35-37. Accordingly, the practice of incumbent protection at the expense of minority representation is a factor weighing in the "totality of circumstances" under § 2, and it is an additional circumstance that demonstrates a Voting Rights Act violation. Cf. 1982 U.S.C.C.A.N. at 206.

The facts demonstrated minority vote dilution in Minneapolis, in violation of § 2 of the Voting Rights Act. See February 19 Order, App. at A-37-38. The federal court stated:

> The all-white senate delegation from Minneapolis, the significant proportional underrepresentation of minorities from the overall legislative delegation from Minneapolis, the apparent attempt to protect incumbencies at the expense of minority concentrations, the fragmentation of a geographically cohesive minority population into different senate districts, the educational disadvantage of Minneapolis minorities, the segregation in the Minneapolis school districts, and the judicial experience showing the need for super-majority minority districts, when considered all together, are sufficient to create a prima facie case in the totality of the circumstances which exists here.

Id., App. at A-38.

In remedying violations, the federal court rejected appellant legislature's proposed plan, which essentially was Chapter 246 as it was proposed to be amended by Senate File 1596. See id., App. at A-38-39. The federal court found that this plan and the state court's plan, adopted from appellant legislature's proposal, perpetuated Voting Rights Act violations. See id., App. at A-39. The federal court therefore issued a plan that remedied Voting Rights Act violations by creating a super-majority minority senate district. See id., App. at A-39-41. The federal court's action was fully supported by the facts, and its plan was necessary to effectuate the purposes of the Act.

IV. THE FEDERAL COURT ACTED IN ACCORD WITH STATE POLICY AND ALL REQUIREMENTS FOR COURT-ORDERED REDISTRICTING.

A. The Federal Court's Plans Are Properly Based on State Policy.

A court must be guided by state policy in redistricting. See LaComb v. Growe, 541 F. Supp. 145, 151 (D. Minn. 1982). In drawing its plans, the federal court considered criteria in a joint legislative resolution, which appellant legislature has acknowledged reflects state policy. See February 19 Order, App. at A-44-45 & n.44. The resolution established 2%, plus or minus, as the maximum permissible population deviation from the ideal for legislative districts. Id., App. at A-44.

The federal court's house plan has a maximum total population deviation of 1.40% (from the maximum negative deviation to the maximum positive deviation), and its senate plan has a total maximum deviation of 1.20%. See id., App. at A-47.

By keeping deviations to a minimum, the federal court's

legislative plan also met the requirements of the Minnesota Constitution, article 4, § 2, which provides that "representation in both houses shall be apportioned equally throughout the different sections of the state in proportion to the population thereof." State policy requires population equality in legislative districts, and the federal court's plan reflects that policy better than any other plans considered. See February 19 Order, App. at A-46-48.

The federal court's congressional redistricting plan provides the smallest population deviations achievable. See February 19 Order, App. at A-55.

The federal court's legislative plan also achieves better than appellant legislature's plan the state policy goals of preserving minority voting strength and increasing probability of minority representation. See id., App. at A-45. This court's plan creates a super-majority minority senate district in Minneapolis with a total minority concentration of 60% and African-American concentration of 43%, a concentration proven adequate to elect minority members to the house from Minneapolis. See id., App. at A-41. The legislative plan proposed by appellant legislature contains no such district.

Additionally, both the federal court's legislative and congressional plan create districts more compact than those proposed by appellant legislature, meeting another requirement of state policy. See id., App. at A-44. In accord with this state policy, a recent scholarly article suggests that a requirement of electoral district compactness must be imposed as a procedural safeguard against partisan gerrymandering. See Polsby and Popper, The Third Criterion: Compactness as a Procedural Safeguard Against Partisan Gerrymandering, 9 Yale Law & Policy Review 301 (1991) (hereinafter "Polsby and Popper"). Polsby and Popper define gerrymandering as a manipulation of district lines for partisan purposes. See id. at 301-02.

The effect of gerrymandering on an individual's vote is

essentially the same as the evil corrected by the apportionment cases in establishing the "one person, one vote" standard mandating that electoral districts have equal populations. See Reynolds v. Sims, 377 U.S. 533 (1964) (state legislatures); Wesberry v. Sanders, 376 U.S. 1 (1964) (federal districts); Baker v. Carr, 369 U.S. 186 (1962); see generally Polsby and Popper at 321-26.

Polsby and Popper conclude that the most appropriate remedy for gerrymandering is to require that:

> In addition to adhering to criteria which mandate that representational districts be composed of contiguous territories and have equal populations, . . . those who define district boundaries must also be required to respect a third criterion, the constraint of compactness. Without the ability to distend district lines so as to include or exclude blocks of voters whose political loyalties are known, it is not practically possible to gerrymander. The diagnostic mark of a gerrymander is the noncompact district.

Polsby and Popper at 302 (emphasis added).

The federal court analyzed its legislative redistricting plan and the other submitted plans using both a visual compactness analysis and a statistical analysis suggested by Polsby and Popper. See February 19 Order, Exhibits, Supp. App. at SA-31, 46. The federal court's analysis demonstrated that its legislative plan was by all measures more compact than the other plans before it, except that the federal court's plan and appellant legislature's plan scored the same for senate district compactness on the Polsby and Popper index.[11] See February 19 Order, Exhibits, Supp.

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[11]The federal court's creation of the super-majority minority senate district in Minneapolis reduced its plan ratio from .51 to .40. See February 19 order, Exhibits, Supp. App. at SA-47 n.2. Without that district, which appellant legislature's plan does not contain, the federal

App. at SA-31, 46.

Similarly, the federal court's congressional plan is more compact than the plan proposed by appellant legislature. See Polsby Indices, Supp. App. at SA-230.[12]

B. The Federal Court Was Not Bound by Weiser or Upham to Follow Chapter 246, Chapter 246 As the Legislature Proposed to Amend It, or Chapter 246 as Adopted by the State Court.

Appellant legislature failed to pass a constitutional legislative redistricting plan acceptable to the Governor and therefore cognizable as state policy. It is disingenuous for appellants now to argue that a hastily drawn, broadly unconstitutional bill, which became law because of a procedurally invalid veto, should have been used by the federal court in drawing its own legislative redistricting plan.

No party can reasonably suggest that an election could be held under Chapter 246. The federal court specifically found that it "could not discern any state policy from the unconstitutional Chapter 246." Order Denying Stay, Supp. App. at SA-61. The federal court could not engage in a statewide guessing game regarding what the legislature might have done to correct the widespread infirmities of Chapter 246, had the legislature recognized them prior to that bill's passage. Precedent regarding what is "legislative history" and this Court's preference to leave to the legislative process the first opportunity to re-draw legislative district lines indicate that it would have been improper for the federal court to have tried to ascertain

court's plan is significantly more compact than appellant legislature's plan. See id.

[12]The Polsby and Popper index for the congressional plans has been adjusted to take into account the use of natural boundaries, such as rivers. See Polsby and Popper at 349 n.206 (suggesting adjustment).

what the legislature might have done.[13] The federal court instead properly drew new lines only after the legislative process failed to accomplish the task of redistricting. In so doing, the court replaced a plan adjudicated to have pervasive constitutional and statutory defects. Cf. Upham v. Seamon, 456 U.S. 37, 41-42 (1982); White v. Weiser, 412 U.S. 783, 794-95 (1973).

Reduced to its essence, appellants' argument on this point is that the federal court committed error by not following the "state policy" of legislative redistricting embodied in Chapter 246 in drawing its legislative plan. Relying on Weiser and Upham, appellants argue that the federal court's relief should have been narrowly circumscribed. This view is incorrect.

The Weiser and Upham decisions both involved Texas redistricting plans that substantially met constitutional and statutory requirements. See generally Upham, 456 U.S. 37; Weiser, 412 U.S. 783. By contrast, the federal and state courts here declared Chapter 246 to be unconstitutional due to numerous defects. The federal court found statutory violations as well and could not discern any state policy.

1. Chapter 246 Was Not Entitled to Deference As State Policy.

[13]The Minnesota Supreme Court described materials that are "legislative history" in Handle With Care v. Department of Human Serv., 406 N.W.2d 518, 522 (Minn. 1987):

> [W]e may 'consider events leading up to [the legislation], the history of its passage, and any modifications made during its course.' We look to committee reports and journal entries. In addition the legislature now tape-records its committee meetings and floor debates, and we have, on occasion, considered transcripts of those recordings.

No committee reports or journal entries were available for the federal court's use. No minutes from the House Redistricting Committee meeting at which Chapter 246 was considered were available.

The federal court did not have a map of the legislative districts created by Chapter 246. Instead, appellant legislature provided the court only with maps that reflected how the legislative majority caucuses intended to amend Chapter 246 when the legislature reconvened.

Furthermore, unlike the plan in Weiser, the maximum population deviations in Chapter 246 were not limited to 2.43% from the ideal, but ranged as much as 45.10% from the ideal. See Emison v. Growe, Civ. No. 4-91-202, Dempsey Affidavit (D.Minn., Oct. 10, 1991), Supp. App. at SA-99.[14]

Chapter 246 created noncontiguous districts, in violation of Minnesota Constitution, article 4, § 3. See, e.g., Legislative Maps, Supp. App. at SA-184. Additionally, Chapter 246 in several instances assigned the same territory to different districts. See, e.g., id., Supp. App. at SA-188. Because of the breadth of these defects and the variety of possible corrections, the federal court's conclusion that it "could not discern any state policy from the unconstitutional Chapter 246" is certainly not clear error. See Order Denying Stay, Supp. App. at SA-61.

Weiser supports the federal court's action. Even if state policy is discernible, "the District Court should defer to state policy in fashioning relief only where that policy is consistent with constitutional norms and is not itself vulnerable to legal challenge." Weiser, 412 U.S. at 797 (emphasis added). See also Karcher v. Daggett, 466 U.S. 910, 911 (1984) (Stevens, J., concurring) ("Once a constitutional violation has been found, a district court has broad discretion to fashion an appropriate remedy.").

Similarly, in Upham, 456 U.S. 37, the congressional redistricting plan contained only minimal flaws, allowing a court to perceive and preserve state policy by making only a few changes. See generally id. The federal court here distinguished Weiser and Upham and found that "Chapter

[14]In some instances, district lines necessarily were assumed in light of the inadequate descriptions in Chapter 246.

246 contained numerous infirmities, including excessive population disparities and noncontiguous districts." February 19 Order, App. at A-43 & n.43, A-52 & n.50.[15] The court recognized Chapter 246 for what it was -- "a hastily drafted bill containing numerous errors" that were "constitutional defects," a fact acknowledged by all the parties. Id., App. at A-43.

The federal court could only speculate as to how legislators might have corrected Chapter 246, had its defects been known at the time of passage. For example, correction of population disparities requires changes not only to the boundaries of the affected districts, but also to one or more neighboring districts. If contiguous districts with opposite but corresponding population deviations cannot be identified, then non-adjoining, more distant districts must be identified and changed, necessitating alterations to districts adjoining them. This "falling domino" process demonstrates the impossibility of determining any cognizable legislative intent from what remains of Chapter 246 after removal of unconstitutional or otherwise invalid legislative districts. Simply stated, any plan requiring such extensive redrafting necessarily involves speculation regarding state policy.

[15]In addition to the grounds relied upon by the federal court, Weiser is distinguishable on other grounds. First, Weiser involved congressional redistricting, where stricter population equality is required, and the rejected plan in Weiser "achieved the goal of population equality to a greater extent than did [the accepted] Plan C." Weiser, 412 U.S. at 796. Also, the lower court in Weiser "did not suggest or hold that the legislative policy of districting so as to preserve the constituencies of congressional incumbents was unconstitutional or even undesirable." Id. at 797. In this case, the federal court found that Chapter 246 was unconstitutional and that its incumbent protection goals in the City of Minneapolis violated the voting rights of minority residents of that city. See February 19 Order, App. at A-35-38.

2. The Proposed Amendments to Chapter 246 Were Not Entitled to Deference As State Policy.

The federal court properly rejected as a statement of state policy the remedies proposed by Senate File 1596,[16] which was passed by the legislature but vetoed by the Governor in January 1992. See February 19 Order, App. at A-43. Because the bill was vetoed, it did not constitute state policy to which a court should defer. See id. (citations omitted). Senate File 1596 was entitled to no greater deference than any other proposed corrections.

Further, the federal court held that "Chapter 246, as well as the modifications proposed in Senate File 1596, do not [sic] provide a remedy for the diminution of minority voting rights we have addressed." Id., App. at A-43. On that ground as well, Chapter 246 and Senate File 1596 were not entitled to deference. See id.

3. Appellant Legislature's Congressional Plan Was Not Entitled to Deference As State Policy.

Senate File 1597, a congressional redistricting bill passed by the legislature in January 1992 but vetoed by the Governor, was not entitled to deference as state policy. A vetoed bill does not constitute any evidence of state policy. See id., App. at A-53; Cotlow v. Growe, C8-91-985, Procedural Order No. 7 (Minn. Spec. Redis. Panel, Mar. 3, 1992 ("Procedural Order No. 7"), App. at A-445-446 n.1.

The federal court's order and plan is the only adjudication on current congressional redistricting. The state court has not issued a congressional redistricting plan, and it has indicated that it will not do so, given the

[16]Senate File 1596, covering 63 pages of text, proposed to correct 160 errors in more than 30 state senate districts and house districts in approximately one-third of the state's 87 counties. See February 19 Order, App. at A-52 n.50; Senate File 1596, Supp. App. at SA-120.

existence of the federal court's plan. See Procedural Order No. 7, App. at A-442-446.

V. THE CLAIMS ASSERTED BEFORE THE FEDERAL COURT WERE NOT RENDERED MOOT.

Appellants did not raise the issue of mootness in the action below and here have conspicuously failed to note the standards applicable to a mootness claim. An action is moot only when the issues presented are no longer "live" or when the parties lack a "legally cognizable interest in the outcome." See County of Los Angeles v. Davis, 440 U.S. 625, 631 (1979). "[T]he burden of demonstrating mootness is a heavy one." Id. (quotation omitted). The central question is "whether decision of a once living dispute continues to be justified by a sufficient prospect that the decision will have an impact on the parties." 13A C. Wright, A. Miller & E. Cooper, Federal Practice & Procedure § 3533 at 212 (1984, supp. 1991).

Both the Emison and Benson appellees sought affirmative relief from the federal court. See Emison Complaint, App. at A-90-91; Benson Complaint, Supp. App. at SA-63. Until the relief sought by the Emison and Benson appellees was granted, their consolidated actions were not moot. Without complete relief for the injury, the injury still existed. Cf. 13A Wright, Miller & Cooper, § 3533.2 at 238-39 ("Decision remains appropriate [and case is not moot although some issues are resolved] if there is a reasonable prospect that the court may award additional relief.").

CONCLUSION

Appellants have failed to demonstrate that the federal court's findings of fact and application of law were clearly erroneous. The federal court was not required to defer to the state court, and it properly retained jurisdiction. The

federal court correctly determined that plans based on the unconstitutional provisions of Chapter 246 perpetuated Voting Rights Act violations. The federal plan for legislative redistricting meets all constitutional and statutory requirements. Overturning it and allowing implementation of the state court's plan would create a precedent not only of allowing state courts to enforce § 2 of the Voting Rights Act, but also would allow them to do so when no § 2 claims are presented in the pleadings before them.

The federal court's congressional redistricting plan, as the only congressional plan enacted or ordered after the 1990 census, is valid and should be affirmed.

For the above stated reasons, the Emison appellees, the Benson appellees, and appellee Lundgren respectfully request that this Court dismiss appellants' jurisdictional statement and this appeal.

Dated: March 21, 1992.

Repsectively submitted,

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DISTRIBUTED
MAR 27 1992
TO BE PRINTED

Supreme Court, U.S.
FILED
MAR 25 1992
OFFICE OF THE CLERK

No. 91-1420

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1991

JOAN GROWE, SECRETARY OF STATE OF THE STATE OF MINNESOTA, ET AL.,

Appellants,

vs.

JAMES EMISON, ET AL.,

Appellees.

Appeal from the United States District Court
for the District of Minnesota

APPELLANTS' RESPONSE TO APPELLEES' MOTION TO DISMISS

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Appellants,

vs.

JAMES EMISON, ET AL.,

Appellees.

Appeal from the United States District Court
for the District of Minnesota

APPELLANTS' RESPONSE TO APPELLEES' MOTION TO DISMISS

Appellees have moved this Court for an order dismissing the appeal of the judgment of the three-judge district court panel for the District of Minnesota which adopted legislative and congressional redistricting plans for Minnesota. The issues raised in the motion are fully and clearly addressed in the Jurisdictional Statement filed by appellants on March 6, 1992. The appellants submit this memorandum in opposition to appellants' motion to dismiss only for the purpose of replying to certain new matters raised in the motion. Appellants

respectfully request the Court to deny appellees' motion and to enter an order summarily reversing the judgment of the district court or noting probable jurisdiction.

I. THE FEDERAL COURT'S LEGISLATIVE REDISTRICTING PLAN SHOULD BE VACATED.

The federal court created its own legislative redistricting plan despite the prior judgment of the state court and despite the fact that Chapter 246 had only technical defects that could easily be remedied with minor clarifications and corrections. Its judgment should be reversed on several grounds.

A. Scott v. Germano Required the Federal Court To Defer to the State Court's Judgment.

Contrary to appellees' assertion, the clear and simple opinion in Scott v. Germano, 381 U.S. 407 (1965) (per curiam), does not indicate merely that courts should defer to legislatures in redistricting matters, but also that federal courts should defer to parallel state court actions. Id. at 409-10, Moreover, under Germano, a federal court certainly should not issue a redistricting plan which conflicts with an already issued state court plan.[1] The federal court in this case has consistently ignored these principles of comity. App. A-103, A-141, A-11.

[1] This principle was recently followed by the California federal redistricting panel which abstained from redistricting because of a parallel state court action. See Members of the Cal. Democratic Congressional Delegation v. Eu, No. C-91-3383 FMS, Opinion and Judgment of Dismissal (N.D. Cal., filed March 3, 1992).

In a contention that strains credulity, appellees assert that it is the state court, and not the federal court, that has violated Germano because the state court issued a legislative plan before the Legislature had acted. Motion to Dismiss, at 7-8. This contention is untenable and is not supported in the record. The state court issued its plan, subject to legislative action, only after the Legislature had enacted Chapter 246, the Legislature had indicated it would attempt to pass a technical corrections bill in January of 1992, and the governor submitted an affidavit stating he would veto any such bill. App. A-263-64. Given these facts, and the state court's desire to assist, not interfere with, the state election schedule, the state court's action was eminently reasonable and did not violate Germano.

Appellees also argue that the federal court did not need to defer to the state court because only the federal court could resolve all the issues raised by the parties in both actions. Motion to Dismiss, at 8-10. Appellees claim that the federal court was the only court presented with Voting Rights Act challenges. Appellees rely on allegations in the federal action that the 1982 legislative districts violated the Voting Rights Act. The 1982 districts, however, were never an issue in either case because they were obviously unconstitutional due to population shifts which had taken place.

The plan at issue in both cases was Chapter 246,[2] and no party in either the state or federal action ever alleged that Chapter 246 violated the Voting Rights Act. The parties did ask the state court to evaluate Chapter 246 to ensure that it satisfied the Voting Rights Act, and the state court, after receiving briefs and oral arguments from the parties, held that the law did not violate the Voting Rights Act. App. A-234, A-249.

Appellees deny that the state court had jurisdiction to resolve Voting Rights Act issues. Any claim of exclusive federal court jurisdiction over Voting Rights issues is belied by the principle that state courts are responsible for enforcing federal law. See Jurisdictional Statement at 9 n.2. As this Court recently stated in Howlett ex rel. Howlett v. Rose:

> Federal law is enforceable in state courts . . . because the Constitution and laws passed pursuant to it are as much laws in the States as laws passed by the state legislature. The Supremacy Clause makes those laws "the supreme Law of the Land," and charges state courts with a coordinate responsibility to enforce that law according to their regular modes of procedure.

496 U.S. 356, 110 S. Ct. 2430, 2438 (1990). The state court's consideration of the Voting Rights Act in issuing its legislative

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[2] Appellees erroneously claim that the state court action involved no challenges to Chapter 246. Motion To Dismiss at 3. Counsel of record for appellees, Bruce Willis, represented intervening plaintiffs in the state action and signed their Complaint in Intervention on August 26, 1991, alleging that the districts created by Chapter 246 "do not meet constitutional and other legal requirements,"

redistricting plan was entirely proper in view of its affirmative obligation to enforce the federal law.[3]

B. The State Court Judgment Precluded the Federal Court from Issuing a Conflicting Redistricting Plan.

Appellees contend that the state court's legislative plan is not entitled to full faith and credit because appellants did not offer the plan to the federal court. Motion to Dismiss, at 11. That is incorrect. After this Court vacated the federal court's December 5, 1991, stay, the Cotlow appellants petitioned the federal court to reconsider its August 21, 1991, order and stay its hand with respect to both legislative and congressional redistricting, on the ground that the state court was proceeding expeditiously and had already completed a constitutionally valid plan of legislative redistricting. On February 11, 1992, the federal court denied the motion without comment. App. A-172. Hence, it is clear that the issue of the preclusive effect of the state court judgment was before the federal court at the time it declined to give any weight to the state court plan.

Appellees next argue that issue preclusion is inappropriate in this case because appellants fail to satisfy three of the four factors necessary for such preclusion. As regards the first factor, appellees argue that the issues in the federal and state court actions were not identical because there were no Voting

[3] The federal redistricting panel in California recently recognized the state court's concurrent jurisdiction over issues raised under Section 2 of the Voting Rights Act. See Members of the Cal. Democratic Congressional Delegation v. Eu, No. C-91-3383 FMS, Opinion and Judgment of Dismissal (N.D. Cal., filed March 3, 1992).

Rights Act allegations in the state court action. The Voting Rights Act issue in the federal action, however, pertained only to the 1982 legislative districts, a plan that the parties had stipulated was constitutionally invalid by the time the federal action was filed. Thus, the federal action's Voting Rights Act allegations are irrelevant. More importantly, the state court in fact considered and ruled on the Voting Rights Act issue. App. A-259. Similarly, the state court also considered and ruled on every challenge to Chapter 246, primarily by interpreting and modifying Chapter 246 to correct and/or eliminate the offending provisions.[4]

Appellees also contend that the second factor necessary for issue preclusion is lacking because the Benson plaintiffs were not present in the state court action. That the Benson plaintiffs technically were not present in the state court proceeding is irrelevant, because, as the appellees themselves note, the federal court found that "[t]hroughout this litigation, the Emison Plaintiffs and the Benson Plaintiffs, infra, have represented the interests of the Independent-Republican (IR) political party." Motion to Dismiss, at 1 n.1. Mr. Willis, the

[4] Significantly, appellees have avoided the issue of what remained in the federal court action with regard to legislative redistricting once the state court judgment was issued. The Emison plaintiffs' claims in the federal action related only to the 1982 districts and became moot once Chapter 246 was enacted. The Benson plaintiffs' claims in the federal action related only to the unconstitutionality of Chapter 246. Once the state court issued its own plan, curing the technical defects in Chapter 246, the claims in the federal action were moot. The federal court issued its order despite the lack of any unresolved claims before it.

Counsel of Record for appellees, has appeared in the state court case representing the Miller intervenors, see App. A-199, and in this case, representing the Emison plaintiffs,[5] as counsel for all Independent-Republican interests in the state. Indeed, the Miller intervenors in the state court action relied on their relationship with the state Independent-Republican party as one of the bases for their intervention.

In sum, the Benson appellees' interests were represented in the state court action, and thus those parties had a full and fair opportunity to participate in that case. That they refused to do so does not mean they lacked the opportunity. Therefore, issue preclusion under Minnesota law clearly bars the appellees from having a second bite at the legislative redistricting apple.

C. The Federal Court's Finding of a Voting Rights Act Violation Is Erroneous and Contrary to Law.

Appellees argue that the federal court properly addressed the Voting Rights Act claims which were "before it." In so arguing, they attempt to gloss over a glaring leap of logic in the federal court's Voting Rights Act analysis.

No party to this case has ever alleged that Chapter 246 or the state court's legislative redistricting plan violates the Voting Rights Act. The only Voting Rights Act claims made related to Minnesota's 1982 legislative districts. Those challenges were immaterial when made because the 1982 plan was

[5] The Benson appellees include the state's Independent-Republican legislative leadership, while the Emison appellees represent the state's Independent-Republican non-legislative leadership.

obviously unconstitutional in 1991 due to population shifts which had occurred. Any relevance the Voting Rights Act claims did have was obliterated when the 1982 districts were repealed by Chapter 246.[6]

The federal court attempted to bridge the gap between the irrelevant Voting Rights Act issues raised in the case and the lack of any challenges to the plan which was enacted or the plan which was adopted by the state court. It held that something, which it never identified, violated the Voting Rights Act and that neither Chapter 246 nor the state court's plan adequately "remedied" this defect. Appellees' claim that the federal court was required to reach a non-issue defies logic.

Appellees further fail to prop up the federal court's finding of a Voting Rights Act violation. Appellees merely cite to the federal court's "findings" without any meaningful legal explication and repeat the federal court's conclusion that in some unexplained way, Chapter 246 and the state court plan "perpetuate" these supposed violations. Motion to Dismiss, at 17-19. As fully explained in the Jurisdictional Statement, this "evidence" was not presented to the federal court by the parties, but was gathered by the court on its own and relied upon without an opportunity for the parties to comment upon it.

[6] Section 69 of Chapter 246 states "Minnesota Statutes 1990, sections 2.019 [and] 2.042 [through] 2.702, are repealed." The effectiveness of this section of Chapter 246 has never been contested since the Governor's attempted veto was declared to have been ineffective on August 2, 1991.

As regards the specific findings, appellees stress the lack of minority representation in the state legislature, Motion to Dismiss at 15, but fail to note that the Voting Rights Act does not require proportional representation. See 42 U.S.C. § 1973(b). Appellees also stress "recent" judicial findings of school segregation, Motion to Dismiss, at 16-17, but ignore the fact that the cited decisions are fifteen to twenty years old. Finally, appellees emphasize that the federal court found that Chapter 246 was designed to protect incumbents "apparently" at the expense of minority interests, id. at 17-18, without any supporting evidence. In sum, appellees simply do not meet the points raised in appellants' Jurisdictional Statement.[7]

D. The Federal Court Ignored State Law and Policy in Drawing Its Legislative Redistricting Plan.

Even if the federal court were free to ignore the state court judgment and even if the Voting Rights Act required a different senate district in Minneapolis, the federal court was required to incorporate to the fullest extent possible state law and policy. White v. Weiser, 412 U.S. 783 (1973); Upham v. Seamon, 456 U.S. 37 (1982) (per curiam). In this case, state law is contained in Chapter 246, and state policy is contained in

[7] Appellees do not even attempt to explain how the federal court's order can stand even on its own terms: The federal court based its finding of a Voting Rights Act violation on the need for a super-majority minority senate district in Minneapolis. The federal court's own plan, however, does not create a senate district where minority voters constitute a majority of voters in the district, even where all minorities are lumped together.

Chapter 246 as amended by Senate File 1596 and in the state court's legislative redistricting plan.[8]

Appellees attempt to justify the federal court's refusal to follow Chapter 246 in two ways. First, they contend that the court was not obligated to respect a redistricting plan which had constitutional or statutory defects. This argument simply misses the point of Weiser and Seamon. The doctrine set forth in these cases applies only where a redistricting plan has constitutional or statutory defects. Where a plan has no such defects, the court is not free to alter it at all.

Second, appellees argue that Chapter 246 was so defective that the federal court could not have adhered to it at all. This argument is patently groundless. Both the state court's plan and the technical corrections bill adopted by the Legislature, Senate File 1596, demonstrate how Chapter 246 can be cured of all its defects with minimal, technical changes. See App. A-249.[9] The federal court did not suggest, nor have the appellees suggested, that any constitutional defects exist in the state court's plan or in Senate File 1596.

In light of appellees' disingenuous characterization of the technical defects in Chapter 246, a fuller explanation of how

[8] Although appellees state that the federal court was not bound by Weiser or Upham to follow the state court plan, appellees submit no argument in support of that contention. See Motion to Dismiss at 22-26.

[9] Both the state court plan and Senate File 1596 are drafted in the form of amendments to Chapter 246 and show the minimal alterations made to the boundaries set forth in the law.

they arose and how they were readily cured is necessary. Errors arose in Chapter 246 primarily in the process of converting maps of the legislative redistricting plan into written boundary descriptions. The Revisor of Statutes, while doing excellent work, made a variety of mistakes in trying to ascertain the boundaries on the map and to describe them accurately. For example, certain boundary descriptions in Chapter 246 erroneously describe a line going "easterly" when it should go "westerly," and misspell or misidentify the names of streets, power lines, and other physical features, resulting in ambiguous district boundaries. In other instances, portions of townships which are surrounded by a separate city, "enclaves," were not joined with the same district as the city, resulting in discontiguous districts. In a couple of instances, cities were placed in two different districts, resulting in both double representation and population deviations.[10]

While these technical defects needed to be corrected, it was hardly an insurmountable task. Most of the defects were not constitutional and were cured through statutory construction. Moreover, nearly all of the districts could be cured consistent with legislative intent by reference to the maps which were used

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[10] The federal court's plans are still in map form. If they are converted to the form of written descriptions so that they can be easily distributed and used by the local election officials, the same types of problems that existed in Chapter 246 in May 1991 and were corrected over the following seven months will certainly arise in the federal court's plan. The state court plan, by contrast, simply corrected the defects in the written descriptions of Chapter 246 and therefore has already overcome this problem. See App. A-234, A-249.

by the legislators in committees, prior to the floor debates, and on the floor when the plan was adopted.

The state court made the minimal necessary corrections to cure these defects. Its order for judgment describes these changes and explains which ones were reached through statutory construction and which changes were necessary to cure constitutional defects. See App. A-265-354.[11]

Where the federal court had before it two plans which were patterned after Chapter 246, it was not free to ignore the law wholesale and create its own plan. Weiser stands for precisely this principle. 412 U.S. at 795. Chapter 246, the state court's plan, and Senate File 1596 all embody state policy to varying degrees. The federal court ignored all of this significant state policy and crafted a legislative redistricting plan of its own. The essence of the federal court's and appellees' justification of this incredibly intrusive action is that the federal court plan is simply "better" than the state court plan, using criteria not constitutionally or statutorily mandated, but more or less

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[11] Senate File 1596 also corrected these defects but further proposed numerous changes of clarification, consistency, and style which had no substantive impact on the plan. The reference by the federal court to these "160 changes" was made despite the clear explanations given by the Legislature regarding this fact.

chosen out of thin air.[12] Such judicial arrogance should not be countenanced and the federal court's decision should be reversed.

II. THE FEDERAL COURT'S CONGRESSIONAL REDISTRICTING PLAN SHOULD BE VACATED.

Two of the principles which require that the federal court's legislative redistricting plan be vacated also require that its congressional redistricting plan be vacated. First, Scott v. Germano required the federal court to defer to the state court on congressional redistricting. The federal court was aware that the state court intended to adopt a congressional plan once the Legislature failed to enact one. See App. A-249, A-359. The state court would have acted sooner but for the injunction which the federal court unlawfully imposed on the state court action from December 5, 1991, until relief was afforded by this Court on January 10, 1992.[13]

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[12] Appellees use the criterion of "compactness" primarily as a pretext to engage in an extended discussion of the dangers of gerrymandering. Motion to Dismiss, at 20-22. Such a discussion iscompletely superfluous, however, as the federal court noted that there was no showing of unconstitutional gerrymandering with respect to the state court plan or to Chapter 246 as amended. App. A-49-50.

[13] The federal court's February 19, 1992, order and judgment are similarly designed to give it continuing and exclusive jurisdiction over Minnesota redistricting through the next census, and presumably forever, by enjoining state election officials from conducting elections except as are consistent with the provisions of the order. App. A- 57-58. This bald attempt to exclude Minnesota state courts from addressing redistricting claims for the foreseeable future is an incredible breach of the principles of comity and should not be permitted to stand.

Appellees now argue that the state court "has indicated" it will not issue a congressional redistricting plan because of the federal court's plan. Motion to Dismiss, at 26-27. This is a gross mischaracterization of the state court's position. What the state court actually "indicated" on March 3, 1992, is clear: "Because Minnesota election officials are enjoined from accepting filings or conducting elections except as in accordance with [the federal court's] plan, we also decline to impose, at this time, an alternative plan. We are fully prepared to release a congressional plan if and when such a course of action becomes appropriate." App. A-446 (emphasis added).[14]

Second, the federal court was obligated to follow state policy to the extent possible. Weiser, 412 U.S. at 793-95. Appellees claim that Senate File 1597 does not constitute any evidence of state policy. Motion to Dismiss, at 26. Appellees are simply wrong. Id. at 795; see also Shayer v. Kirkpatrick, 541 F. Supp. 922, 932 (W.D. Mo.), aff'd sub nom. Schatzle v.

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[14] It is undisputed that the drawing of congressional districts is a state responsibility. The United States Constitution gives responsibility for drawing congressional district boundaries to state legislatures. Art. I, § 4. When a state legislature fails to adopt a congressional redistricting plan, state courts are urged, under the doctrine established in Scott v. Germano to adopt a plan. Numerous state courts have met this responsibility, California being the most recent example. E.g., Wilson v. Eu, No. S022835, 1992 WL 12071 (Cal. Jan. 27, 1992); Assembly v. Deukmejian, 30 Cal. 3d 638, 180 Cal. Rptr. 297, 639 P.2d 939, cert. denied and app. dismissed sub nom. Republican Nat'l Comm. v. Burton, 456 U.S. 941 (1982); Legislature v. Reineke, 6 Cal. 3d 595, 99 Cal. Rptr. 481, 492 P.2d 385 (1972); Koziol v. Burkhardt, 51 N.J. 412, 241 A.2d 451 (1968); People ex rel. Scott v. Kerner, 33 Ill. 2d 460, 211 N.E.2d 736 (1965).

Kirkpatrick, 456 U.S. 966 (1982); Donnelly v. Meskill, 345 F. Supp. 962, 964-65 (D. Conn. 1972); cf. Legislature v. Reinecke, 6 Cal. 3d 595, 99 Cal. Rptr. 481, 486-87, 492 P.2d 385 (1972). Where the federal court had before it a congressional plan adopted by the Legislature, that court was not at liberty to create its own plan.[15]

III. CONCLUSION

This Court has enunciated a clear rule on the subject of the jurisdiction of a federal panel in redistricting:· The instrumentalities of a state, including its legislature and courts, have jurisdiction to complete redistricting. Only if the state agencies fail may a federal court intervene, and then only to correct errors. The federal court has repeatedly ignored this rule to the harm of the People of the State of Minnesota. Minnesotans must not be compelled to conduct their 1992 elections within districts created through the usurpation of the constitutional authority of the state's legislature and its courts. The judgment below should be summarily reversed.

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[15] The federal court and appellees do recognize the principle that courts must be guided by state policy in redistricting. The only evidence of state policy which the federal court and appellees find acceptable, however, are the joint legislative resolutions establishing criteria for redistricting. These resolutions, one for congressional redistricting and one for legislative redistricting, were passed by both houses of the legislature but do not constitute state law because they were not enacted as bills and were not signed by the governor. The same deference accorded to these legislative pronouncements should have been accorded by the federal court to the congressional redistricting plan which was adopted by both houses of the Minnesota Legislature in 1992 session.

Immediate resolution of these issues is necessary to prevent further confusion and unnecessary expense and to ensure the timely implementation of the state electoral processes.

Dated: March 24, 1992

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Supreme Court, U.S.
FILED
MAR 23 1992
OFFICE OF THE CLERK

(4)

No. 91-1420

In the

Supreme Court of the United States

October Term, 1991

JOAN GROWE, SECRETARY OF STATE
OF THE STATE OF MINNESOTA, et al.
Appellants,

v.

JAMES EMISON, et al.
Respondents.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

APPELLEES' SUPPLEMENTAL APPENDIX

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[1]/ This supplemental appendix contains, *inter alia*, materials issued by and filed with the United States District Court for the District of Minnesota in *Emison v. Growe*, Civ. File No. 4-91-202, and the Minnesota Special Redistricting Panel in *Cotlow v. Growe*, No. C8-91-985. The materials contained herein are supplemental to the separate Appendix to Jurisdictional Statement filed by appellants herein, and include additional documents not contained in that Appendix, or portions of documents omitted from that Appendix.

The first group of items contains portions of the Order and Plans of Redistricting issued by the Federal Court, which constitute part of the order and judgment from which appellants have appealed. The remainder is a chronological reference to certain pleadings and papers filed in the Federal Court action. The second group of materials relates to *Cotlow v. Growe*, and contains supplemental papers presented in chronological order. The third group of material includes various information concerning legislative redistricting efforts by the Minnesota State Legislature, maps and charts, and other documents which constistute omitted portions of documents contained in plaintiffs' Jurisdictional Statement, or pertinent to the appellees' Motion to Dismiss.

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ORDER AND PLANS OF REDISTRICTING
U.S. DISTRICT COURT
CIV. 4-91-202
III. EXHIBITS
1. DEVIATION ANALYSIS

LEGISLATIVE REDISTRICTING — DEVIATION ANALYSIS DEFENDANT-PLAINTIFF-FEDERAL COURT PLANS COMPARED

Each of the 134 House and 67 Senate Districts as proposed by the Defendant and the Plaintiff and the Federal Court Plan were analyzed in order to measure the extent of the population deviations from the "Ideal" sizes of 32,650 and 65,300, respectively, for the District in each plan.

The data are taken from the electronic plan files of each of the parties and of the plan prepared by the Federal Court.

It should be noted, again, that the individual district estimated deviations that are tabulated in this exhibit cannot be compared district by district between the three plans because the district numbering systems used by each plan *do not result in comparably numbered districts.* Only the deviation summary data shown on page 12 are directly comparable.

In order to facilitate comparisons the data are presented in two forms. Pages 4 through 7 list the percentage deviations (+ or -) from ideal populations for both House and Senate districts in order by District number for each plan. Pages 8 through 12 present these same data organized in order from the largest negative deviation to the largest positive deviation first for House districts and then by Senate districts.

The results of the analyses are summarized below:

1. House Districts:

Defendant's House districts range from a negative

deviation of -1.96% (640 persons) to a positive deviation of 1.97% (643 persons); a range of 1243 persons or 3.93%. On the average (i.e. the statistical mean deviation) Defendant's House districts deviate from the ideal population by .92% (302 persons). None of the Defendant's House districts are at the ideal population level.

Plaintiffs House districts range from a negative deviation of -0.95% (309 persons) to a positive deviation of 0.96% (314 persons); a range of 623 persons or 1.91%. On the average (i.e. the statistical mean deviation) Plaintiff's House districts deviate from the ideal population by .32% (106 persons). One of the Plaintiff's House districts is at the ideal population level.

The Federal Court Plan House Districts range from a negative deviation of -0.74% (243 persons) to a positive deviation of 0.66% (214 persons); a range of 457 persons or 1.40%. On the average (i.e. the statistical mean deviation) Federal Court House districts deviate from the ideal population by .19% (62 persons). Six of the Federal Court Plan House districts are at the ideal population level.

In relative terms, if the Defendant's House plan mean deviation range is indexed at 1.00, the Plaintiff's House plan has an index of 2.85 and the Federal Court House plan has an index of 4.87. (In this analysis, the greater the size of the index number, the better a plan meets a criteria of minimal deviation.)

2. Senate Districts:

Defendant's Senate districts range from a negative deviation of -1.83% (1197 persons) to a positive deviation of 1.59% (1036 persons); a range of 2233 persons or 3.42%. On the average (i.e. the statistical mean deviation) Defendant's Senate districts deviate from the ideal population by .66% (430 persons). None of the Defendant's Senate districts are at the ideal population level.

Plaintiffs did not submit statistical data for their Senate districts. One can be deduced from the House district data and the results are shown in the tabular data that follows. These deduced data show that Plaintiff's

plan realizes a lower mean deviation and a range that is about one-half of the defendant's plan.

The Federal Court Plan Senate Districts range from a negative deviation of -0.62% (401 persons) to a positive deviation of 0.58% (368 persons); a range of 769 persons or 1.20%. On the average (i.e. the statistical mean deviation) Federal Court Senate districts deviate from the ideal population by .15% (98 persons). Two of the Federal Court Plan Senate districts are at the ideal population level.

In relative terms, if the Defendant's Senate plan mean deviation range is indexed at 1.00, the Plaintiff's plan an index of 2.86 and the Federal Court Senate plan has an index of 4.53. (In this analysis, the greater the size of the index number, the better a plan meets a criterion of minimal deviation.)

3. Summary:

A. In the case of both House and Senate districts the Federal Court plan shows significantly lower population deviation from the "Ideal" district population numbers. (All three of the examined plans show deviations within the 2% *maximum (+ or -)* deviation stipulated by all parties.) To the extent that a tendency towards deviations that approach the maximum permissible deviation may indicate a potential for gerrymandering the Federal Court plan again shows the lowest potential.

B. The deviation range comparisons shown as the final item on Page 12 further illustrate the effect of achieving reasonable minimum deviations. In the case of the Defendant's plan less than one-half of the Senate Districts and one-third of the House Districts are within one-half of one percent of ideal population. In the Plaintiff's plan all but six of the Senate Districts and seventy-five percent of the House Districts are within one-half of one percent of ideal population. In the Court's Plan only three Senate Districts of the sixty seven are more than one-half of one percent over the ideal population and more than ninety percent of the House Districts are within one half of one percent of ideal populations.

DEFENDANT DIST. NUMBER		DEVIATION		PLAINTIFF DIST. NUMBER		DEVIATION		COURT PLAN DIST. NUMBER		DEVIATION	
HSE	SEN	HOUSE	SENATE	HSE	SEN	HOUSE	SENATE	HSE	SEN	HOUSE	SENATE
	1		-.58%		1		.80%		1		-.05%
1A		-1.50%		1A		.83%		1A		-.01%	
1B		.34%		1B		.76%		1B		-.09%	
	2		-1.84%		2		.21%		2		-.25%
2A		-1.81%		2A		-.16%		2A		-.09%	
2B		-1.86%		2B		.57%		2B		-.41%	
	3		-.05%		3		-.64%		3		.15%
3A		-1.48%		3A		-.33%		3A		-.11%	
3B		1.38%		3B		-.95%		3B		.40%	
	4		.20%		4		.47%		4		.07%
4A		-1.04%		4A		.96%		4A		.01%	
4B		1.44%		4B		-.02%		4B		.12%	
	5		.06%		5		-.41%		5		-.13%
5A		.47%		5A		.11%		5A		-.36%	
5B		-.36%		5B		-.92%		5B		.11%	
	6		-.56%		6		-.46%		6		.24%
6A		-.09%		6A		-.47%		6A		.41%	
6B		-1.03%		6B		-.44%		6B		.06%	

DEFENDANT DIST. NUMBER		DEVIATION		PLAINTIFF DIST. NUMBER		DEVIATION		COURT PLAN DIST. NUMBER		DEVIATION	
HSE	SEN	HOUSE	SENATE	HSE	SEN	HOUSE	SENATE	HSE	SEN	HOUSE	SENATE
	7		-.89%		7		.30%		7		.06%
7A		- .57%		7A		.31%		7A		.03%	
7B		-1.20%		7B		.29%		7B		.09%	
	8		1.06%		8		.19%		8		-.09%
8A		1.66%		8A		.47%		8A		.36%	
8B		.46%		8B		-.10%		8B		-.53%	
	9		1.12%		9		-.18%		9		.24%
9A		.52%		9A		.16%		9A		.55%	
9B		1.71%		9B		-.51%		9B		-.08%	
	10		1.40%		10		.47%		10		.08%
10A		1.22%		10A		.09%		10A		.02%	
10B		1.57%		10B		.84%		10B		.14%	
	11		1.01%		11		.32%		11		.01%
11A		1.83%		11A		.43%		11A		.27%	
11B		.18%		11B		.21%		11B		-.25%	
	12		-.33%		12		.10%		12		-.08%
12A		1.16%		12A		-.56%		12A		-.15%	
12B		-1.81%		12B		.76%		12B			

DEFENDANT DIST. NUMBER		DEVIATION		PLAINTIFF DIST. NUMBER		DEVIATION		COURT PLAN DIST. NUMBER		DEVIATION	
HSE	SEN	HOUSE	SENATE	HSE	SEN	HOUSE	SENATE	HSE	SEN	HOUSE	SENATE
	13		.32%		13		.42%		13		.38%
13A		-.77%		13A		.29%		13A		.23%	
13B		1.41%		13B		.54%		13B		.52%	
	14		.78%		14		.35%		14		-.38%
14A		1.34%		14A		.88%		14A		-.16%	
14B		.21%		14B		-.18%		14B		-.60%	
	15		-.39%		15		-.10%		15		.20%
15A		-.11%		15A		.08%		15A		.24%	
15B		-.67%		15B		-.27%		15B		.16%	
	16		1.59%		16		-.30%		16		.10%
16A		1.49%		16A		-.04%		16A		-.06%	
16B		1.68%		16B		-.55%		16B		.26%	
	17		.94%		17		.12%		17		.19%
17A		1.75%		17A		.36%		17A		-.17%	
17B		.13%		17B		-.13%		17B		.54%	
	18		-1.16%		18		.13%		18		-.01%
18A		-1.07%		18A		.28%		18A		.13%	
18B		-1.24%		18B		-.02%		18B		.11%	

DEFENDANT DIST. NUMBER		DEVIATION		PLAINTIFF DIST. NUMBER		DEVIATION		COURT PLAN DIST. NUMBER		DEVIATION	
HSE	SEN	HOUSE	SENATE	HSE	SEN	HOUSE	SENATE	HSE	SEN	HOUSE	SENATE
	19		-.41%		19		.08%		19		.31%
19A		-1.43%		19A		-.11%		19A			
19B		.62%		19B		.26%		19B		.61%	
	20		-.34%		20		.49%		20		.11%
20A		1.03%		20A		.37%		20A		.21%	
20B		-1.70%		20B		.61%		20B			
	21		1.14%		21		-.05%		21		-.59%
21A		.98%		21A		-.55%		21A		-.44%	
21B		1.29%		21B		.45%		21B		-.74%	
	22		.23%		22		.18%		22		.02%
22A		-.73%		22A		.06%		22A		.06%	
22B		1.19%		22B		.29%		22B		-.03%	
	23		-.01%		23		-.11%		23		.58%
23A		1.18%		23A		-.59%		23A		.50%	
23B		-1.20%		23B		.37%		23B		.66%	
	24		1.55%		24		-.01%		24		-.62%
24A		1.57%		24A		.08%		24A		-.61%	
24B		1.53%		24B		-.10%		24B		-.62%	

DEFENDANT DIST. NUMBER		DEVIATION		PLAINTIFF DIST. NUMBER		DEVIATION		COURT PLAN DIST. NUMBER		DEVIATION	
HSE	SEN	HOUSE	SENATE	HSE	SEN	HOUSE	SENATE	HSE	SEN	HOUSE	SENATE
	25		-.12%		25		.26%		25		-.07%
25A		.01%		25A		.44%		25A		-.01%	
25B		-.24%		25B		.07%		25B		-.13%	
	26		.66%		26		.07%		26		-.30%
26A		-.32%		26A		.75%		26A		-.54%	
26B		1.64%		26B		.62%		26B		-.06%	
	27		.03%		27		-.34%		27		-.03%
27A		1.26%		27A		.14%		27A		-.03%	
27B		-1.21%		27B		.82%		27B		-.03%	
	28		1.27%		28		-.22%		28		-.15%
28A		1.96%		28A		.13%		28A		-.06%	
28B		.58%		28B		.30%		28B		-.24%	
	29		1.07%		29		.61%		29		-.36%
29A		1.83%		29A		.74%		29A		-.39%	
29B		.30%		29B		.47%		29B		-.32%	
	30		-.08%		30		-.69%		30		.14%
30A		1.01%		30A		.87%		30A		-.15%	
30B		-1.16%		30B		.50%		30B		.42%	

DEFENDANT DIST. NUMBER		DEVIATION		PLAINTIFF DIST. NUMBER		DEVIATION		COURT PLAN DIST. NUMBER		DEVIATION	
HSE	SEN	HOUSE	SENATE	HSE	SEN	HOUSE	SENATE	HSE	SEN	HOUSE	SENATE
	31		-.55%		31		-.11%		31		.27%
31A		-1.00%		31A		.23%		31A		28%	
31B		-.09%		31B		.45%		31B		.25%	
	32		.14%		32		.08%		32		.05%
32A		-.32%		32A		.36%		32A		.36%	
32B		.60%		32B		.52%		32B		-.26%	
	33		.65%		33		-.08%		33		-.15%
33A		.85%		33A		.66%		33A		.40%	
33B		.44%		33B		.81%		33B		-.69%	
	34		- .41%		34		-.80%		34		- .15%
34A		-.83%		34A		.89%		34A		-.12%	
34B		.01%		34B		-.71%		34B		-.17%	
	35		.62%		35		-.37%		35		.07%
35A		.89%		35A		-.70%		35A		-.05%	
35B		.35%		35B		-.03%		35B		-.09%	
	36		-.63%		36		.50%		36		.25%
36A		-.34%		36A		.81%		36A		.28%	
36B		-.92%		36B		.19%		36B		.21%	

DEFENDANT DIST. NUMBER		DEVIATION		PLAINTIFF DIST. NUMBER		DEVIATION		COURT PLAN DIST. NUMBER		DEVIATION	
HSE	SEN	HOUSE	SENATE	HSE	SEN	HOUSE	SENATE	HSE	SEN	HOUSE	SENATE
	37		-1.69%		37		-.51%		37		.13%
37A		-1.60%		37A		-.58%		37A		.03%	
37B		-1.78%		37B		-.43%		37B		-.28%	
	38		-1.30%		38		.30%		38		.02%
38A		-1.17%		38A		.31%		38A		-.02%	
38B		-1.42%		38B		.28%		38B		.06%	
	39		-.46%		39		-.13%		39		.07%
39A		-.87%		39A		-.45%		39A		.19%	
39B		-.04%		39B		.20%		39B		-.05%	
	40		-1.08%		40		-.45%		40		.10%
40A		-.92%		40A		-.92%		40A		-.19%	
40B		-1.23%		40B		.02%		40B			
	41		-1.49%		41		-.15%		41		.07%
41A		-1.82%		41A		-.08%		41A		.04%	
41B		-1.15%		41B		-.21%		41B		-.17%	
	42		-.88%		42		-.07%		42		.06%
42A		-.78%		42A		-.05%		42A		-.05%	
42B		-.97%		42B		-.09%		42B		.20%	

DEFENDANT DIST. NUMBER		DEVIATION		PLAINTIFF DIST. NUMBER		DEVIATION		COURT PLAN DIST. NUMBER		DEVIATION	
HSE	SEN	HOUSE	SENATE	HSE	SEN	HOUSE	SENATE	HSE	SEN	HOUSE	SENATE
	43		-.83%		43		-.04%		43		.07%
43A		-1.96%		43A		-.17%		43A			
43B		.31%		43B		.10%		43B		-.13%	
	44		-.31%		44		.29%		44		.09%
44A		-.64%		44A		.01%		44A		.09%	
44B		.02%		44B		.57%		44B		.09%	
	45		.28%		45		-.35%		45		.17%
45A		1.56%		45A		-.50%		45A		-.14%	
45B		-1.00%		45B		-.19%		45B		-.19%	
	46		-.58%		46		.12%		46		.03%
46A		.63%		46A		.02%		46A		-.10%	
46B		-1.79%		46B		.21%		46B		.04%	
	47		.40%		47		-.06%		47		.02%
47A		.49%		47A		.43%		47A		-.04%	
47B		.30%		47B		-.55%		47B		.07%	
	48		.22%		48		-.03%		48		.19%
48A		1.11%		48A		.15%		48A		-.13%	
48B		-.68%		48B		-.20%		48B		-.24%	

DEFENDANT DIST. NUMBER		DEVIATION		PLAINTIFF DIST. NUMBER		DEVIATION		COURT PLAN DIST. NUMBER		DEVIATION	
HSE	SEN	HOUSE	SENATE	HSE	SEN	HOUSE	SENATE	HSE	SEN	HOUSE	SENATE
	49		-.21%		49		.26%		49		.12%
49A		-1.53%		49A		.51%		49A		.01%	
49B		1.12%		49B		.01%		49B		-.25%	
	50		-.29%		50		.05%		50		
50A		-.05%		50A		.22%		50A		-.08%	
50B		-.53%		50B		-.12%		50B		.08%	
	51		.10%		51		.10%		51		.14%
51A		-.30%		51A		.15%		51A		.27%	
51B		.49%		51B		.05%		51B			
	52		.48%		52		.02%		52		-.15%
52A		-.01%		52A		.01%		52A		-.32%	
52B		.97%		52B		.02%		52B		.02%	
	53		.40%		53		.06%		53		.08%
53A		-.82%		53A		.13%		53A		.25%	
53B		1.62%		53B		-.01%		53B		-.09%	
	54		-.84%		54		.06%		54		-.23%
54A		-1.28%		54A		.03%		54A		-.44%	
54B		-.39%		54B		-.15%		54B		-.01%	

DEFENDANT DIST. NUMBER		DEVIATION		PLAINTIFF DIST. NUMBER		DEVIATION		COURT PLAN DIST. NUMBER		DEVIATION	
HSE	SEN	HOUSE	SENATE	HSE	SEN	HOUSE	SENATE	HSE	SEN	HOUSE	SENATE
	55		1.53%		55		-.03%		55		.10%
55A		1.97%		55A		-.15%		55A		.14%	
55B		1.09%		55B		.10%		55B		.06%	
	56		-.86%		56		.07%		56		.22%
56A		-.69%		56A		.11%		56A		.35%	
56B		-1.03%		56B		.02%		56B		.08%	
	57		-1.27%		57				57		.12%
57A		-.64%		57A		-.07%		57A		.24%	
57B		-1.89%		57B		.07%		57B		-.01%	
	58		-1.00%		58		.04%		58		
58A		-.97%		58A		-.05%		58A		.02%	
58B		-1.03%		58B		.13%		58B		-.02%	
	59		.03%		59		-.18%		59		.13%
59A		.15%		59A		-.24%		59A		-.05%	
59B		-.09%		59B		-.11%		59B		.30%	
	60		.32%		60		-.04%		60		-.14%
60A		-.52%		60A		-.08%		60A		-.18%	
60B		1.16%		60B				60B		-.09%	

DEFENDANT DIST. NUMBER		DEVIATION		PLAINTIFF DIST. NUMBER		DEVIATION		COURT PLAN DIST. NUMBER		DEVIATION	
HSE	SEN	HOUSE	SENATE	HSE	SEN	HOUSE	SENATE	HSE	SEN	HOUSE	SENATE
	61		1.08%		61		.21%		61		.19%
61A		1.15%		61A		-.13%		61A		.20%	
61B		1.01%		61B		.55%		61B		.18%	
	62		.80%		62		-.37%		62		-.03%
62A		.15%		62A		-.86%		62A		-.14%	
62B		1.44%		62B		.12%		62B		.08%	
	63		.14%		63		.05%		63		.03%
63A		-.75%		63A		.06%		63A		-.05%	
63B		1.03%		63B		.03%		63B		.10%	
	64		-.40%		64		-.20%		64		.05%
64A		-.64%		64A		-.44%		64A		-.08%	
64B		-.15%		64B		.04%		64B		.18%	
	65		-.08%		65		-.39%		65		-.02%
65A		.12%		65A		-.04%		65A		.01%	
65B		-.27%		65B		-.74%		65B		-.04%	
	66		-.26%		66		.08%		66		-.12%
66A		-.39%		66A		.06%		66A		-.31%	
66B		-.13%		66B		.09%		66B		.07%	

DEFENDANT DIST. NUMBER		DEVIATION		PLAINTIFF DIST. NUMBER		DEVIATION		COURT PLAN DIST. NUMBER		DEVIATION	
HSE	SEN	HOUSE	SENATE	HSE	SEN	HOUSE	SENATE	HSE	SEN	HOUSE	SENATE
	67		.53%		67		.21%		67		.22%
67A		.78%		67A		.39%		67A		.10%	
67B		.28%		67B		.02%		67B		.34%	

DISTRICTS LISTED IN RANK ORDER - LARGEST NEGATIVE TO LARGEST POSITIVE DEVIATION

DEFENDANT DIST. NUMBER HSE	SEN	DEVIATION HOUSE	SENATE	PLAINTIFF DIST. NUMBER HSE	SEN	DEVIATION HOUSE	SENATE	COURT PLAN DIST. NUMBER HSE	SEN	DEVIATION HOUSE	SENATE
43A		-1.96%		3B		-.95%		21B		-.74%	
57B		-1.89%		5B		-.92%		33B		-.69%	
2B		-1.86%		40A		-.92%		24B		-.62%	
41A		-1.82%		34A		-.89%		24A		-.61%	
2A		-1.81%		30A		-.87%		14B		-.60%	
12B		-1.81%		62A		-.86%		26A		-.54%	
46B		-1.79%		27B		-.82%		8B		-.53%	
37B		-1.78%		33B		-.81%		21A		-.44%	
20B		-1.70%		65B		-.74%		54A		-.44%	
37A		-1.60%		34B		-.71%		2B		-.41%	
49A		-1.53%		35A		-.70%		29A		-.39%	
1A		-1.50%		26B		-.62%		5A		-.36%	
3A		-1.48%		23A		-.59%		29B		-.32%	
19A		-1.43%		37A		-.58%		52A		-.32%	
38B		-1.42%		12A		-.56%		66A		-.31%	
54A		-1.28%		16B		-.55%		37B		-.28%	
18B		-1.24%		21A		-.55%		32B		-.26%	

DEFENDANT DIST. NUMBER HSE	SEN	DEVIATION HOUSE	SENATE	PLAINTIFF DIST. NUMBER HSE	SEN	DEVIATION HOUSE	SENATE	COURT PLAN DIST. NUMBER HSE	SEN	DEVIATION HOUSE	SENATE
40B		-1.23%		47B		-.55%		11B		-.25%	
27B		-1.21%		9B		-.51%		49B		-.25%	
7B		-1.20%		30B		-.50%		28B		-.24%	
23B		-1.20%		45A		-.50%		48B		-.24%	
38A		-1.17%		6A		-.47%		40A		-.19%	
30B		-1.16%		31B		-.45%		45B		-.19%	
41B		-1.15%		39A		-.45%		60A		-.18%	
18A		-1.07%		6B		-.44%		17A		-.17%	
4A		-1.04%		64A		-.44%		34B		-.17%	
6B		-1.03%		37B		-.43%		41B		-.17%	
56B		-1.03%		32A		-.36%		14A		-.16%	
58B		-1.03%		3A		-.33%		12A		-.15%	
31A		-1.00%		28B		-.30%		30A		-.15%	
45B		-1.00%		15B		-.27%		45A		-.14%	
42B		-.97%		59A		-.24%		62A		-.14%	
58A		-.97%		41B		-.21%		18A		-.13%	
36B		-.92%		48B		-.20%		25B		-.13%	
40A		-.92%		45B		-.19%		43B		-.13%	

DEFENDANT DIST. NUMBER HSE	SEN	DEVIATION HOUSE	SENATE	PLAINTIFF DIST. NUMBER HSE	SEN	DEVIATION HOUSE	SENATE	COURT PLAN DIST. NUMBER HSE	SEN	DEVIATION HOUSE	SENATE
39A		-.87%		14B		-.18%		48A		-.13%	
34A		-.83%		43A		-.17%		34A		-.12%	
53A		-.82%		2A		-.16%		3A		-.11%	
42A		-.78%		54B		-.15%		46A		-.10%	
13A		-.77%		55A		-.15%		1B		-.09%	
63A		-.75%		17B		-.13%		2A		-.09%	
22A		-.73%		28A		-.13%		35B		-.09%	
56A		-.69%		61A		-.13%		53B		-.09%	
48B		-.68%		50B		-.12%		60B		-.09%	
15B		-.67%		19A		-.11%		9B		-.08%	
44A		-.64%		59B		-.11%		50A		-.08%	
57A		-.64%		8B		-.10%		64A		-.08%	
64A		-.64%		24B		-.10%		16A		-.06%	
7A		-.57%		42B		-.09%		26B		-.06%	
50B		-.53%		41A		-.08%		28A		-.06%	
60A		-.52%		60A		-.08%		35A		-.05%	
54B		-.39%		57A		-.07%		39B		-.05%	
66A		-.39%		42A		-.05%		42A		-.05%	

DEFENDANT DIST. NUMBER HSE	SEN	DEVIATION HOUSE	SENATE	PLAINTIFF DIST. NUMBER HSE	SEN	DEVIATION HOUSE	SENATE	COURT PLAN DIST. NUMBER HSE	SEN	DEVIATION HOUSE	SENATE
5B		-.36%		58A		-.05%		59A		-.05%	
36A		-.34%		16A		-.04%		63A		-.05%	
26A		-.32%		65A		-.04%		47A		-.04%	
32A		-.32%		35B		-.03%		65B		-.04%	
51A		-.30%		4B		-.02%		22B		-.03%	
65B		-.27%		18B		-.02%		27A		-.03%	
25B		-.24%		53B		-.01%		27B		-.03%	
64B		-.15%		60B				38A		-.02%	
66B		-.13%		44A		.01%		58B		-.02%	
15A		-.11%		49B		.01%		1A		-.01%	
6A		-.09%		52A		.01%		25A		-.01%	
31B		-.09%		40B		.02%		54B		-.01%	
59B		-.09%		46A		.02%		57B		-.01%	
50A		-.05%		52B		.02%		12B			
39B		-.04%		56B		.02%		19A			
52A		-.01%		67B		.02%		20B			
25A		.01%		54A		.03%		40B			
34B		.01%		63B		.03%		43A			

DEFENDANT DIST. NUMBER HSE	SEN	DEVIATION HOUSE	SENATE	PLAINTIFF DIST. NUMBER HSE	SEN	DEVIATION HOUSE	SENATE	COURT PLAN DIST. NUMBER HSE	SEN	DEVIATION HOUSE	SENATE
44B		.02%		64B		.04%		51B			
65A		.12%		51B		.05%		4A		.01%	
17B		.13%		22A		.06%		49A		.01%	
59A		.15%		63A		.06%		65A		.01%	
62A		.15%		66A		.06%		10A		.02%	
11B		.18%		25B		.07%		52B		.02%	
14B		.21%		57B		.07%		58A		.02%	
67B		.28%		15A		.08%		7A		.03%	
29B		.30%		24A		.08%		37A		.03%	
47B		.30%		10A		.09%		41A		.04%	
43B		.31%		66B		.09%		46B		.04%	
1B		.34%		43B		.10%		6B		.06%	
35B		.35%		55B		.10%		22A		.06%	
33B		.44%		5A		.11%		38B		.06%	
8B		.46%		56A		.11%		55B		.06%	
5A		.47%		62B		.12%		47B		.07%	
47A		.49%		53A		.13%		66B		.07%	
51B		.49%		58B		.13%		50B		.08%	

DEFENDANT DIST. NUMBER HSE	SEN	DEVIATION HOUSE	SENATE	PLAINTIFF DIST. NUMBER HSE	SEN	DEVIATION HOUSE	SENATE	COURT PLAN DIST. NUMBER HSE	SEN	DEVIATION HOUSE	SENATE
9A		.52%		27A		.14%		56B		.08%	
28B		.58%		48A		.15%		62B		.08%	
32B		.60%		51A		.15%		7B		.09%	
19B		.62%		9A		.16%		44A		.09%	
46A		.63%		36B		.19%		44B		.09%	
67A		.78%		39B		.20%		63B		.10%	
33A		.85%		11B		.21%		67A		.10%	
35A		.89%		46B		.21%		5B		.11%	
52B		.97%		50A		.22%		18B		.11%	
21A		.98%		31A		.23%		4B		.12%	
30A		1.01%		19B		.26%		10B		.14%	
61B		1.01%		18A		.28%		55A		.14%	
20A		1.03%		38B		.28%		15B		.16%	
63B		1.03%		7B		.29%		61B		.18%	
55B		1.09%		13A		.29%		64B		.18%	
48A		1.11%		22B		.29%		39A		.19%	
49B		1.12%		7A		.31%		42B		.20%	
61A		1.15%		38A		.31%		61A		.20%	

DEFENDANT DIST. NUMBER HSE	SEN	DEVIATION HOUSE	SENATE	PLAINTIFF DIST. NUMBER HSE	SEN	DEVIATION HOUSE	SENATE	COURT PLAN DIST. NUMBER HSE	SEN	DEVIATION HOUSE	SENATE
12A		1.16%		17A		.36%		20A		.21%	
60B		1.16%		20A		.37%		36B		.21%	
23A		1.18%		23B		.37%		13A		.23%	
22B		1.19%		67A		.39%		15A		.24%	
10A		1.22%		11A		.43%		57A		.24%	
27A		1.26%		47A		.43%		31B		.25%	
21B		1.29%		25A		.44%		53A		.25%	
14A		1.34%		21B		.45%		16B		.26%	
3B		1.38%		8A		.47%		11A		.27%	
13B		1.41%		29B		.47%		51A		.27%	
4B		1.44%		49A		.51%		31A		.28%	
62B		1.44%		32B		.52%		36A		.28%	
16A		1.49%		13B		.54%		59B		.30%	
24B		1.53%		61B		.55%		67B		.34%	
45A		1.56%		2B		.57%		56A		.35%	
10B		1.57%		44B		.57%		8A		.36%	
24A		1.57%		20B		.61%		32A		.36%	
53B		1.62%		33A		.66%		3B		.40%	

DEFENDANT DIST. NUMBER HSE	SEN	DEVIATION HOUSE	SENATE	PLAINTIFF DIST. NUMBER HSE	SEN	DEVIATION HOUSE	SENATE	COURT PLAN DIST. NUMBER HSE	SEN	DEVIATION HOUSE	SENATE
26B		1.64%		29A		.74%		33A		.40%	
8A		1.66%		26A		.75%		6A		.41%	
16B		1.68%		1B		.76%		30B		.42%	
9B		1.71%		12B		.76%		23A		.50%	
17A		1.75%		36A		.81%		13B		.52%	
11A		1.83%		1A		.83%		17B		.54%	
29A		1.83%		10B		.84%		9A		.55%	
28A		1.96%		14A		.88%		19B		.61%	
55A		1.97%		4A		.96%		23B		.66%	

DEFENDANT DIST. NUMBER HSE	SEN	DEVIATION HOUSE	SENATE	PLAINTIFF DIST. NUMBER HSE	SEN	DEVIATION HOUSE	SENATE	COURT PLAN DIST. NUMBER HSE	SEN	DEVIATION HOUSE	SENATE
2		-1.84%		34		-.80%		24		-.62%	
37		-1.69%		30		-.69%		21		-.59%	
41		-1.49%		3		-.64%		14		-.38%	
38		-1.30%		37		-.51%		29		-.36%	
57		-1.27%		6		-.46%		26		-.30%	
18		-1.16%		40		-.45%		2		-.25%	
40		-1.08%		5		-.41%		54		-.23%	
58		-1.00%		65		-.39%		48		-.19%	
7		-.89%		62		-.37%		45		-.17%	

DEFENDANT DIST. NUMBER HSE	SEN	DEVIATION HOUSE	SENATE	PLAINTIFF DIST. NUMBER HSE	SEN	DEVIATION HOUSE	SENATE	COURT PLAN DIST. NUMBER HSE	SEN	DEVIATION HOUSE	SENATE
42		-.88%		35		-.37%		28		-.15%	
56		-.86%		45		-.35%		52		-.15%	
54		-.84%		27		-.34%		33		-.15%	
43		-.83%		16		-.30%		34		-.15%	
36		-.63%		28		-.22%		60		-.14%	
1		-.58%		64		-.20%		5		-.13%	
46		-.58%		9		-.18%		37		-.13%	
6		-.56%		59		-.18%		49		-.12%	
31		-.55%		41		-.15%		66		-.12%	
39		-.46%		39		-.13%		40		-.10%	
34		-.41%		23		-.11%		8		-.09%	
19		-.41%		31		-.11%		12		-.08%	
64		-.40%		15		-.10%		25		-.07%	
15		-.39%		33		-.08%		35		-.07%	
20		-.34%		42		-.07%		41		-.07%	
12		-.33%		47		-.06%		43		-.07%	
44		-.31%		54		-.06%		1		-.05%	
50		-.29%		21		-.05%		27		-.03%	

DEFENDANT DIST. NUMBER		DEVIATION		PLAINTIFF DIST. NUMBER		DEVIATION		COURT PLAN DIST. NUMBER		DEVIATION	
HSE	SEN	HOUSE	SENATE	HSE	SEN	HOUSE	SENATE	HSE	SEN	HOUSE	SENATE
66		-.26%		60		-.04%		46		-.03%	
49		-.21%		43		-.04%		62		-.03%	
25		-.12%		48		-.03%		65		-.02%	
30		-.08%		55		-.03%		18		-.01%	
65		-.08%		24		-.01%		50			
3		-.05%		57				58			
23		-.01%		52		.02%		11		.01%	
27		.03%		58		.04%		22		.02%	
59		.03%		63		.05%		47		.02%	
5		.06%		50		.05%		38		.02%	
51		.10%		53		.06%		63		.03%	
32		.14%		26		.07%		32		.05%	
63		.14%		56		.07%		64		.05%	
4		.20%		19		.08%		7		.06%	
48		.22%		66		.08%		4		.07%	
22		.23%		32		.08%		39		.07%	
45		.28%		12		.10%		42		.08%	
13		.32%		51		.10%		10		.08%	

DEFENDANT DIST. NUMBER		DEVIATION		PLAINTIFF DIST. NUMBER		DEVIATION		COURT PLAN DIST. NUMBER		DEVIATION	
HSE	SEN	HOUSE	SENATE	HSE	SEN	HOUSE	SENATE	HSE	SEN	HOUSE	SENATE
60		.32%		17		.12%		53		.08%	
47		.40%		46		.12%		44		.09%	
53		.40%		18		.13%		16		.10%	
52		.48%		22		.18%		55		.10%	
67		.53%		8		.19%		20		.11%	
35		.62%		2		.21%		57		.12%	
33		.65%		67		.21%		59		.13%	
26		.66%		61		.21%		30		.14%	
14		.78%		25		.26%		51		.14%	
62		.80%		49		.26%		3		.15%	
17		.94%		44		.29%		17		.19%	
11		1.01%		38		.30%		61		.19%	
8		1.06%		7		.30%		15		.20%	
29		1.07%		11		.32%		56		.22%	
61		1.08%		14		.35%		67		.22%	
9		1.12%		13		.42%		6		.24%	
21		1.14%		10		.47%		9		.24%	
28		1.27%		4		.47%		36		.25%	

DEFENDANT DIST. NUMBER HSE	SEN	DEVIATION HOUSE	SENATE	PLAINTIFF DIST. NUMBER HSE	SEN	DEVIATION HOUSE	SENATE	COURT PLAN DIST. NUMBER HSE	SEN	DEVIATION HOUSE	SENATE
10		1.40%		20		.49%		31		.27%	
55		1.53%		36		.50%		19		.31%	
24		1.55%		29		.61%		13		.38%	
16		1.59%		1		.80%		23		.58%	

DEVIATIONS SUMMARY:

	DEFENDANT		PLAINTIFF		COURT PLAN	
HOUSE:						
MEAN DEV., %	.93%		.33%		.19%	
MEAN DEV., #	302		107		62	
SENATE:						
MEAN DEV., %	.66%		.24%		.15%	
MEAN DEV., #	430		152		98	
HOUSE:						
MOST +	643,	1.97%	314,	.96%	214,	.66%
MOST -	-640,	-1.96%	-309,	-.95%	-243,	-.74%
SENATE:						
MOST +	1036,	1.59%	508,	.80%	368,	.58%
MOST -	-1197,	1.83%	508,	-.80%	-401,	-.62%
RANGE:						
HOUSE, # & %	1283,	3.93%	623,	1.91%	457,	1.40%
SENATE, # & %	2233,	3.42%	1016,	1.60%	769,	1.20%

RANGE COMPARISONS: NUMBER OF DISTRICTS -SENATE/HOUSE

DEVIATION %	DEFENDANT	PLAINTIFF	COURT PLAN
0% (IDEAL)	0/0	1/1	2/6
>.00% TO .25%	15/20	39/67	54/97
.25% TO .50%	16/19	21/30	8/18
.51% TO 1.00%	17/34	6/36	3/13
> 1.00%	19/65	0/0	0/0
TOTALS:	67/134	67/134	67/134

ORDER AND PLANS OF REDISTRICTING
U.S. DISTRICT COURT

CIV.4-91-202
III. EXHIBITS
2. VISUAL COMPACTNESS ANALYSIS

LEGISLATIVE REDISTRICTING
DISTRICT COMPACTNESS ANALYSIS

DEFENDANT-PLAINTIFF-FEDERAL COURT PLANS
COMPARED

Each of the 134 House and 67 Senate Districts as proposed by the Defendant and the Plaintiff and the Federal Court Plan were analyzed in order to measure the relative compactness of the Districts in each plan.

The analytical process was comprised of drawing a minimum diameter circumscribed circle around each district.[1] The total area of the district as a percentage of the total area of the circumscribed circle was visually judged. An index number based on the percentage ranges listed below was assigned to each district:

[1]MINNESOTA LAW REVIEW, "Partisan Gerrymandering in the Post-Bandemere Era", Backstrom, et. al., Constitutional Commentary, [Vol. 4:285 1987], p 92.

Percent of Circumscribed Circle Occupied by Proposed District	Index Number Assigned
0 to 25 percent	1
26 to 40 percent	2
41 to 60 percent	3
61 to 75 percent	4
76 to 100 percent	5

The assigned index numbers are based on visual, "eyeballed", estimates. It should be noted that the individual district estimated indexes that are tabulated in this exhibit cannot be compared district by district between the three plans because the district numbering systems used by each plan do not result in comparably numbered districts. Only the Index Totals shown and summarized on the last page are directly comparable.

The results of the analysis are summarized below:

1. For both House and Senate Districts the Plaintiff's proposed districts are very slightly more compact (i.e., by a 3% margin) than the Defendant's Districts. For House Districts the Federal Court districts are significantly more compact than either of the other two proposed plans (i.e., 15% more compact than the Defendant's districts and 12% more compact than the Plaintiff's districts.)

For Senate Districts the Federal Court districts are 8% more compact than the Defendant's districts and 5% more compact than the Plaintiff's districts.

2. The distribution, by Index Number, for each plan appears as follows:

Index # & Pct	Plaintiff House	Plaintiff Senate	Defendant House	Defendant Senate	Court Plan House	Court Plan Senate
1 (0-25%)	26	7	32	9	18	8
2 (26-40%)	59	38	62	38	52	29
3 (41-60%)	44	20	28	18	47	27
4 (61-75%)	5	2	12	2	16	3
5 (76-100%)	0	0	0	0	1	0
	134	67	134	67	134	67
Relative Index-	103	103	100	100	115	108
Mean	2.21	2.25	2.15	2.19	2.48	2.39

In summary, there appears to be little significant difference between the Defendant's and the Plaintiff's proposals with respect to relative district compactness. On balance, the Plaintiff's proposal shows a marginally better mean index and a larger number of total House and Senate Districts that fall in the more compact (Index Numbers 3 and 4) measurements. The Federal Court plan, on the other hand, has approximately 50 percent more districts falling in the Index Numbers 3 and 4 category than either of the other two plans. To the extent that a lack of compactness may indicate a potential for gerrymandering for partisan purposes the Federal Court plan shows the lowest potential.

The pages that follow are a tabulation of the data on a district-by-district basis.

COMPACTNESS VISUAL INDEX		MASTERS DIST NUMBER		COMPACTNESS VISUAL INDEX	
HOUSE	SENATE	HSE	SEN	HOUSE	SENATE
	2		1		3
2		1A		3	
2		1B		2	
	2		2		2
1		2A		1	
1		2B		1	
	1		3		1
1		3A		2	
1		3B		4	
	2		4		2
2		4A		2	
2		4B		3	
	1		5		3
1		5A		3	
2		5B		2	
	3		6		1
3		6A		1	
2		6B		3	
	2		7		2
2		7A		1	

DEFNDT DIST NUMBER		COMPACTNESS VISUAL INDEX		PLNTIF DIST. NUMBER		C VI
HSE	SEN	HOUSE	SENATE	HSE	SEN	HO
	1		2		1	
1A		2		1A		
1B		2		1B		
	2		2		2	
2A		3		2A		
2B		1		2B		
	3		2		3	
3A		2		3A		
3B		1		3B		
	4		2		4	
4A		2		4A		
4B		2		4B		
	5		2		5	
5A		2		5A		
5B		2		5B		
	6		2		6	
6A		1		6A		
6B		2		6B		
	7		2		7	
7A		1		7A		

DEFNDT DIST NUMBER HSE	DEFNDT DIST NUMBER SEN	COMPACTNESS VISUAL INDEX HOUSE	COMPACTNESS VISUAL INDEX SENATE	PLNTIF DIST. NUMBER HSE	PLNTIF DIST. NUMBER SEN	COMPACTNESS VISUAL INDEX HOUSE	COMPACTNESS VISUAL INDEX SENATE	MASTERS DIST NUMBER HSE	MASTERS DIST NUMBER SEN	COMPACTNESS VISUAL INDEX HOUSE	COMPACTNESS VISUAL INDEX SENATE
7B		1		7B		1		7B		1	
	8		2		8		2		8		1
8A		2		8A		3		8A		3	
8B		3		8B		1		8B		1	
	9		3		9		3		9		2
9A		4		9A		3		9A		3	
9B		2		9B		3		9B		2	
	10		1		10		3		10		2
10A		4		10A		2		10A		4	
10B		2		10B		2		10B		3	
	11		1		11		1		11		3
11A		2		11A		1		11A		2	
11B		3		11B		2		11B		3	
	12		2		12		2		12		3
12A		3		12A		2		12A		2	
12B		2		12B		2		12B		3	
	13		4		13		2		13		2
13A		2		13A		4		13A		2	
13B		1		13B		3		13B		3	
	14		2		14		3		14		3

DEFNDT DIST NUMBER HSE	DEFNDT DIST NUMBER SEN	COMPACTNESS VISUAL INDEX HOUSE	COMPACTNESS VISUAL INDEX SENATE	PLNTIF DIST. NUMBER HSE	PLNTIF DIST. NUMBER SEN	COMPACTNESS VISUAL INDEX HOUSE	COMPACTNESS VISUAL INDEX SENATE	MASTERS DIST NUMBER HSE	MASTERS DIST NUMBER SEN	COMPACTNESS VISUAL INDEX HOUSE	COMPACTNESS VISUAL INDEX SENATE
14A		3		14A		3		14A		3	
14B		2		14B		2		14B		2	
	15		3		15		3		15		1
15A		4		15A		2		15A		2	
15B		3		15B		3		15B		3	
	16		3		16		2		16		3
16A		2		16A		3		16A		3	
16B		3		16B		2		16B		2	
	17		3		17		1		17		2
17A		2		17A		1		17A		2	
17B		1		17B		2		17B		3	
	18		3		18		2		18		1
18A		2		18A		2		18A		3	
18B		1		18B		3		18B		2	
	19		3		19		2		19		3
19A		3		19A		2		19A		2	
19B		1		19B		3		19B		2	
	20		2		20		3		20		2
20A		2		20A		3		20A		3	
20B		1		20B		3		20B		4	

DEFNDT DIST NUMBER HSE	SEN	COMPACTNESS VISUAL INDEX HOUSE	SENATE	PLNTIF DIST. NUMBER HSE	SEN	COMPACTNESS VISUAL INDEX HOUSE	SENATE	MASTERS DIST NUMBER HSE	SEN	COMPACTNESS VISUAL INDEX HOUSE	SENATE
	21		1		21		2		21		3
21A		2		21A		3		21A		4	
21B		2		21B		4		21B		3	
	22		3		22		2		22		4
22A		3		22A		2		22A		3	
22B		3		22B		2		22B		2	
	23		2		23		2		23		2
23A		1		23A		2		23A		2	
23B		2		23B		1		23B		2	
	24		3		24		1		24		3
24A		1		24A		1		24A		3	
24B		2		24B		2		24B		4	
	25		3		25		2		25		3
25A		1		25A		1		25A		3	
25B		1		25B		3		25B		4	
	26		3		26		3		26		2
26A		3		26A		4		26A		1	
26B		2		26B		2		26B		2	
	27		2		27		3		27		2
27A		4		27A		3		27A		1	

DEFNDT DIST NUMBER HSE	SEN	COMPACTNESS VISUAL INDEX HOUSE	SENATE	PLNTIF DIST. NUMBER HSE	SEN	COMPACTNESS VISUAL INDEX HOUSE	SENATE	MASTERS DIST NUMBER HSE	SEN	COMPACTNESS VISUAL INDEX HOUSE	SENATE
27B		4		27B		3		27B		3	
	28		2		28		3		28		2
28A		2		28A		3		28A		3	
28B		1		28B		2		28B		3	
	29		1		29		2		29		3
29A		1		29A		1		29A		2	
29B		2		29B		1		29B		3	
	30		3		30		3		30		2
30A		3		30A		2		30A		2	
30B		1		30B		2		30B		2	
	31		3		31		2		31		3
31A		2		31A		2		31A		2	
31B		2		31B		1		31B		2	
	32		2		32		2		32		2
32A		1		32A		1		32A		3	
32B		2		32B		1		32B		2	
	33		3		33		2		33		3
33A		4		33A		3		33A		4	
33B		1		33B		2		33B		1	
	34		3		34		2		34		2

DEFNDT DIST NUMBER HSE	SEN	COMPACTNESS VISUAL HOUSE	INDEX SENATE	PLNTIF DIST. NUMBER HSE	SEN	COMPACTNESS VISUAL HOUSE	INDEX SENATE	MASTERS DIST NUMBER HSE	SEN	COMPACTNESS VISUAL HOUSE	INDEX SENATE
34A		2		34A		2		34A		1	
34B		2		34B		2		34B		2	
	35		2		35		2		35		3
35A		2		35A		3		35A		4	
35B		4		35B		2		35B		3	
	36		2		36		2		36		3
36A		2		36A		2		36A		2	
36B		3		36B		3		36B		4	
	37		3		37		2		37		3
37A		3		37A		1		37A		2	
37B		2		37B		2		37B		4	
	38		2		38		3		38		3
38A		2		38A		3		38A		3	
38B		1		38B		3		38B		3	
	39		2		39		3		39		3
39A		4		39A		3		39A		2	
39B		3		39B		3		39B		2	
	40		2		40		3		40		3
40A		2		40A		3		40A		3	
40B		1		40B		2		40B		4	

DEFNDT DIST NUMBER HSE	SEN	COMPACTNESS VISUAL HOUSE	INDEX SENATE	PLNTIF DIST. NUMBER HSE	SEN	COMPACTNESS VISUAL HOUSE	INDEX SENATE	MASTERS DIST NUMBER HSE	SEN	COMPACTNESS VISUAL HOUSE	INDEX SENATE
	41		2		41		3		41		2
41A		2		41A		1		41A		2	
41B		2		41B		2		41B		1	
	42		2		42		3		42		4
42A		3		42A		2		42A		3	
42B		2		420		3		42B		2	
	43		2		43		1		43		1
43A		1		43A		2		43A		1	
43B		2		43B		4		43B		2	
	44		2		44		2		44		3
44A		1		44A		3		44A		3	
44B		3		44B		2		44B		2	
	45		2		45		2		45		2
45A		2		45A		3		45A		3	
45B		2		45B		2		45B		3	
	46		4		46		3		46		3
46A		2		46A		3		46A		2	
46B		2		46B		2		46B		3	
	47		2		47		2		47		3
47A		4		47A		1		47A		2	

DEFNDT DIST NUMBER HSE	SEN	COMPACTNESS VISUAL INDEX HOUSE	SENATE	PLNTIF DIST. NUMBER HSE	SEN	COMPACTNESS VISUAL INDEX HOUSE	SENATE	MASTERS DIST NUMBER HSE	SEN	COMPACTNESS VISUAL INDEX HOUSE	SENATE
47B		3		47B		2		47B		3	
	48		1		48		2		48		3
48A		1		48A		2		48A		2	
48B		2		48B		3		48B		2	
	49		2		49		1		49		2
49A		1		49A		2		49A		2	
49B		2		49B		1		49B		3	
	50		2		50		2		50		2
50A		2		50A		1		50A		2	
50B		2		50B		2		50B		3	
	51		1		51		2		51		1
51A		4		51A		3		51A		2	
51B		2		51B		2		51B		2	
	52		2		52		4		52		2
52A		3		52A		3		52A		1	
52B		2		52B		3		52B		3	
	53		3		53		4		53		3
53A		1		53A		3		53A		2	
53B		3		53B		3		53B		2	
	54		3		54		2		54		2

DEFNDT DIST NUMBER HSE	SEN	COMPACTNESS VISUAL INDEX HOUSE	SENATE	PLNTIF DIST. NUMBER HSE	SEN	COMPACTNESS VISUAL INDEX HOUSE	SENATE	MASTERS DIST NUMBER HSE	SEN	COMPACTNESS VISUAL INDEX HOUSE	SENATE
54A		2		54A		2		54A		1	
54B		2		54B		3		54B		1	
	55		1		55		3		55		1
55A		2		55A		2		55A		2	
55B		1		55B		3		55B		1	
	56		1		56		2		56		2
56A		3		56A		2		56A		3	
56B		1		56B		1		56B		3	
	57		2		57		2		57		3
57A		1		57A		1		57A		2	
57B		3		57B		2		57B		2	
	58		2		58		2		58		2
58A		3		58A		2		58A		3	
58B		4		58B		3		58B		5	
	59		2		59		3				2
59A		3		59A		3		59A	59	3	
59B		3		59B		3		59B		2	
	60		2		60		3		60		3
60A		2		60A		2		60A		2	
60B		3		60B		3		60B		4	

DEFNDT DIST NUMBER HSE	SEN	COMPACTNESS VISUAL INDEX HOUSE	SENATE	PLNTIF DIST. NUMBER HSE	SEN	COMPACTNESS VISUAL INDEX HOUSE	SENATE	MASTERS DIST NUMBER HSE	SEN	COMPACTNESS VISUAL INDEX HOUSE	SENATE
	61		2		61		2		61		2
61A		3		61A		2		61A		1	
61B		2		61B		3		61B		1	
	62		2		62		2		62		3
62A		2		62A		2		62A		3	
62B		2		62B		2		62B		3	
	63		2		63		2		63		2
63A		2		63A		2		63A		4	
63B		2		63B		3		63B		2	
	64		3		64		3		64		4
64A		1		64A		1		64A		2	
64B		4		64B		4		64B		4	
	65		2		65		2		65		2
65A		3		65A		2		65A		3	
65B		2		65B		2		65B		2	
	66		1		66		2		66		2
66A		1		66A		3		66A		4	
66B		2		66B		2		66B		4	
	67		2		67		2		67		2
67A		1		67A		2		67A		3	

DEFNDT DIST NUMBER HSE	SEN	COMPACTNESS VISUAL INDEX HOUSE	SENATE	PLNTIF DIST. NUMBER HSE	SEN	COMPACTNESS VISUAL INDEX HOUSE	SENATE	MASTERS DIST NUMBER HSE	SEN	COMPACTNESS VISUAL INDEX HOUSE	SENATE
67B		2		67B		1		67B		3	
TOTAL		288	147	TOTAL		296	151	TOTAL		332	159

RELATIVE NDX, HOUSE
DEFENDANT=1.00
PLAINTIFF=1.03
MASTERS =1.15

RELAT1VE NDX, SENATE
DEFENDANT=1.00
PLAINTIFF=1.03
MASTERS =1.08

ORDER AND PLANS OF REDISTRICTING
U.S. DISTRICT COURT
CIV. 4-91-202
III. EXHIBITS
2. STATISTICAL COMPACTNESS ANALYSIS

LEGISLATIVE REDISTRICTING -
DISTRICT COMPACTNESS ANALYSIS

DEFENDANT-PLAINTIFF-FEDERAL COURT PLANS
COMPARED

METHOD 2, STATISTICAL COMPARISONS

Each of the 134 House and 67 Senate Districts as proposed by the Defendant, the Plaintiff and the Federal Court Plans were analyzed by two different techniques in order to measure the relative compactness of the Districts in each plan.

In this Exhibit, the analytical process was comprised of statistically measuring the ratio of the area of the district to the area of a circle whose circumference is equal to the perimeter of the measured district.[1] The statistical technique results in an index number of between 0.00 and 1.00 for each district. The closer the index approaches 1.00, the more compact the district. As in Exhibit 1, the indexes were calculated for each district proposed by the Defendants, the Plaintiffs and the Federal Court Plan:

[1]YALE LAW AND POLICY REVIEW, "The Third Criterion: Compactness as a Procedural Safeguard Against Partisan Gerrymandering", Polsby and Popper, Vol. 9:301, 1991, p349.

It should be noted again, that the individual district estimated indexes that are tabulated in this exhibit cannot be compared district by district between the three plans because the district numbering systems used by each plan do not result in comparably numbered districts. Only the Index Totals shown and summarized on the last page are directly comparable.

The results of the analysis are summarized below:

1. House Districts:

At the House district level the Defendant's average compactness ratio is 0.41; the Plaintiff's ratio is 0.42 and, the Federal Court Plan ratio. is 0.44. When the Defendant's plan is indexed to 1.000 the Plaintiff's plan index is 1.010 (1.0% more compact) and the Federal Court plan index is 1.071 (7.1% more compact).

2. Senate Districts:

At the Senate district level the Defendant's average compactness ratio is 0.40; the Plaintiff's ratio is 0.36 and, the Federal Court Plan ratio is 0.40. When the Defendant's plan is indexed to 1.000 the Plaintiff's plan index is 0.903 (9.7% less compact) and the Federal Court plan index is 1.000 (the same as the Defendant's index).[2]

In summary, this second method of measuring compactness confirms the results of the visual (or "eyeball") method detailed in EXHIBIT 1. Both methods are recognized methodologies for the estimation of relative district

[2]The creation of the "super-majority" minority Senate district in Minneapolis by the Court reduced its previous ratio from .51 to .40. Without that district, which the Defendant's plan does not contain, the Court plan is significantly more compact than the Defendant's plan.

compactness as a test for potential indications of partisan gerrymandering. In the plans evaluated herein both methods provide results that indicate that, of the three plans examined, the Federal Court plan has the lowest potential for gerrymander.

DEFNDT DIST NUMBER HSE	SEN	COMPACTNESS POLSBY INDEX HOUSE	SENATE	MASTERS DIST NUMBER HSE	SEN	COMPACTNESS POLSBY INDEX HOUSE	SENATE	PLNTIF DIST. NUMBER HSE	SEN
	1		.23		1		.40		1
1A		.39		1A		.38		1A	
1B		.36		1B		.43		1B	
	2		.20		2		.50		2
2A		.23		2A		.36		2A	
2B		.28		2B		.53		2B	
	3		.25		3		.34		3
3A		.34		3A		.38		3A	
3B		.29		3B		.66		3B	
	4		.24		4		.36		4
4A		.48		4A		.38		4A	
4B		.19		4B		.37		4B	
	5		.19		5		.24		5
5A		.29		5A		.26		5A	
5B		.32		5B		.43		5B	
	6		.55		6		.37		6
6A		.37		6A		.35		6A	
6B		.36		6B		.49		6B	

DEFNDT DIST NUMBER		COMPACTNESS POLSBY INDEX		PLNTIF DIST. NUMBER		COMPACTNESS POLSBY INDEX		MASTERS DIST NUMBER		COMPACTNESS POLSBY INDEX	
HSE	SEN	HOUSE	SENATE	HSE	SEN	HOUSE	SENATE	HSE	SEN	HOUSE	SENATE
	7		.16		7		.23		7		.17
7A		.14		7A		.27		7A		.16	
7B		.23		7B		.16		7B		.26	
	8		.40		8		.21		8		.44
8A		.49		8A		.30		8A		.44	
8B		.45		8B		.20		8B		.41	
	9		.32		9		.33		9		.32
9A		.24		9A		.37		9A		.27	
9B		.29		9B		.44		9B		.29	
	10		.37		10		.61		10		.40
10A		.54		10A		.62		10A		.45	
10B		.49		10B		.46		10B		.32	
	11		.33		11		.25		11		.51
11A		.43		11A		.35		11A		.48	
11B		.51		11B		.34		11B		.63	
	12		.37		12		.32		12		.41
12A		.60		12A		.43		12A		.36	
12B		.31		12B		.41		12B		.39	

DEFNDT DIST NUMBER		COMPACTNESS POLSBY INDEX		PLNTIF DIST. NUMBER		COMPACTNESS POLSBY INDEX		MASTERS DIST NUMBER		COMPACTNESS POLSBY INDEX	
HSE	SEN	HOUSE	SENATE	HSE	SEN	HOUSE	SENATE	HSE	SEN	HOUSE	SENATE
	13		.55		13		.41		13		.34
13A		.45		13A		.54		13A		.39	
13B		.32		13B		.45		13B		.44	
	14		.25		14		.44		14		.31
14A		.33		14A		.61		14A		.49	
14B		.31		14B		.47		14B		.42	
	15		.38		15		.47		15		.33
15A		.72		15A		.48		15A		.50	
15B		.38		15B		.59		15B		.48	
	16		.40		16		.35		16		.24
16A		.24		16A		.40		16A		.26	
16B		.51		16B		.47		16B		.20	
	17		.40		17		.24		17		.29
17A		.42		17A		.27		17A		.26	
17B		.35		17B		.46		17B		.61	
	18		.49		18		.36		18		.41
18A		.46		18A		.46		18A		.57	
18B		.29		18B		.57		18B		.48	

DEFNDT DIST NUMBER HSE	DEFNDT DIST NUMBER SEN	COMPACTNESS POLSBY HOUSE	COMPACTNESS INDEX SENATE	PLNTIF DIST. NUMBER HSE	PLNTIF DIST. NUMBER SEN	COMPACTNESS POLSBY HOUSE	COMPACTNESS INDEX SENATE	MASTERS DIST NUMBER HSE	MASTERS DIST NUMBER SEN	COMPACTNESS POLSBY HOUSE	COMPACTNESS INDEX SENATE
	19		.47		19		.28		19		.27
19A		.48		19A		.34		19A		.23	
19B		.28		19B		.36		19B		.51	
	20		.35		20		.54		20		.31
20A		.40		20A		.58		20A		.46	
20B		.29		20B		.71		20B		.45	
	21		.40		21		.35		21		.24
21A		.41		21A		.44		21A		.40	
21B		.54		21B		.56		21B		.27	
	22		.67		22		.17		22		.59
22A		.66		22A		.26		22A		.59	
22B		.57		22B		.31		22B		.57	
	23		.30		23		.31		23		.35
23A		.24		23A		.62		23A		.51	
23B		.25		23B		.38		23B		.34	
	24		.39		24		.36		24		.45
24A		.13		24A		.49		24A		.39	
24B		.20		24B		.51		24B		.51	

DEFNDT DIST NUMBER HSE	DEFNDT DIST NUMBER SEN	COMPACTNESS POLSBY HOUSE	COMPACTNESS INDEX SENATE	PLNTIF DIST. NUMBER HSE	PLNTIF DIST. NUMBER SEN	COMPACTNESS POLSBY HOUSE	COMPACTNESS INDEX SENATE	MASTERS DIST NUMBER HSE	MASTERS DIST NUMBER SEN	COMPACTNESS POLSBY HOUSE	COMPACTNESS INDEX SENATE
	25		.62		25		.32		25		.44
25A		.31		25A		.42		25A		.45	
25B		.42		25B		.50		25B		.70	
	26		.52		26		.48		26		.26
26A		.49		26A		.25		26A		.24	
26B		.47		26B		.39		26B		.41	
	27		.68		27		.58		27		.23
27A		.78		27A		.72		27A		.25	
27B		.71		27B		.45		27B		.39	
	28		.47		28		.37		28		.47
28A		.66		28A		.50		28A		.67	
28B		.37		28B		.23		28B		.62	
	29		.40		29		.51		29		.46
29A		.25		29A		.40		29A		.33	
29B		.48		29B		.29		29B		.45	
	30		.05		30		.26		30		.23
30A		.15		30A		.28		30A		.32	
30B		.05		30B		.24		30B		.32	

DEFNDT DIST NUMBER HSE	SEN	COMPACTNESS POLSBY HOUSE	INDEX SENATE	PLNTIF DIST. NUMBER HSE	SEN	COMPACTNESS POLSBY HOUSE	INDEX SENATE	MASTERS DIST NUMBER HSE	SEN	COMPACTNESS POLSBY HOUSE	INDEX SENATE
	31		.27		31		.36		31		.35
31A		.15		31A		.34		31A		.23	
31B		.46		31B		.45		31B		.38	
	32		.54		32		.58		32		.46
32A		.31		32A		.36		32A		.29	
32B		.53		32B		.51		32B		.57	
	33		.43		33		.51		33		.43
33A		.40		33A		.55		33A		.63	
33B		.29		33B		.37		33B		.22	
	34		.39		34		.29		34		.26
34A		.45		34A		.29		34A		.21	
34B		.37		34B		.25		34B		.38	
	35		.34		35		.43		35		.39
35A		.30		35A		.65		35A		.56	
35B		.60		35B		.52		35B		.37	
	36		.49		36		.38		36		.46
36A		.47		36A		.54		36A		.49	
36B		.62		36B		.46		36B		.69	

DEFNDT DIST NUMBER HSE	SEN	COMPACTNESS POLSBY HOUSE	INDEX SENATE	PLNTIF DIST. NUMBER HSE	SEN	COMPACTNESS POLSBY HOUSE	INDEX SENATE	MASTERS DIST NUMBER HSE	SEN	COMPACTNESS POLSBY HOUSE	INDEX SENATE
	37		.44		37		.42		37		.50
37A		.50		37A		.25		37A		.47	
37B		.43		37B		.50		37B		.49	
	38		.38		38		.59		38		.55
38A		.41		38A		.62		38A		.44	
38B		.30		38B		.51		38B		.49	
	39		.60		39		.45		39		.52
39A		.47		39A		.47		39A		.44	
39B		.60		39B		.41		39B		.38	
	40		.35		40		.32		40		.39
40A		.38		40A		.38		40A		.63	
40B		.27		40B		.42		40B		.40	
	41		.29		41		.48		41		.41
41A		.42		41A		.44		41A		.41	
41B		.33		41B		.60		41B		.38	
	42		.33		42		.54		42		.43
42A		.36		42A		.41		42A		.60	
42B		.40		42B		.64		42B		.31	

DEFNDT DIST NUMBER HSE	SEN	COMPACTNESS POLSBY INDEX HOUSE	SENATE	PLNTIF DIST. NUMBER HSE	SEN	COMPACTNESS POLSBY INDEX HOUSE	SENATE	MASTERS DIST NUMBER HSE	SEN	COMPACTNESS POLSBY INDEX HOUSE	SENATE
	43		.31		43		.28		43		.38
43A		.15		43A		.32		43A		.37	
43B		.32		43B		.49		43B		.42	
	44		.31		44		.18		44		.56
44A		.22		44A		.53		44A		.41	
44B		.47		44B		.23		44B		.65	
	45		.22		45		.22		45		.47
45A		.28		45A		.28		45A		.54	
45B		.39		45B		.43		45B		.63	
	46		.50		46		.44		46		.40
46A		.33		46A		.47		46A		.24	
46B		.25		46B		.30		46B		.30	
	47		.55		47		.33		47		.35
47A		.64		47A		.32		47A		.30	
47B		.47		47B		.49		47B		.56	
	48		.25		48		.33		48		.33
48A		.33		48A		.40		48A		.33	
48B		.43		48B		.34		48B		.46	

DEFNDT DIST NUMBER HSE	SEN	COMPACTNESS POLSBY INDEX HOUSE	SENATE	PLNTIF DIST. NUMBER HSE	SEN	COMPACTNESS POLSBY INDEX HOUSE	SENATE	MASTERS DIST NUMBER HSE	SEN	COMPACTNESS POLSBY INDEX HOUSE	SENATE
	49		.34		49		.12		49		.59
49A		.27		49A		.24		49A		.35	
49B		.29		49B		.22		49B		.47	
	50		.63		50		.41		50		.47
50A		.49		50A		.38		50A		.55	
50B		.55		50B		.41		50B		.33	
	51		.36		51		.26		51		.44
51A		.62		51A		.50		51A		.45	
51B		.49		51B		.29		51B		.63	

United States District Court
District of Minnesota
Fourth Division

James Emison, Judy Fairbanks, Marie Iverson, Ken Dean, Steve Castillo, Lew Freeman, and Yao Lo, individually and on behalf of all Citizens and Voters of the State of Minnesota similarly situated,

Plaintiffs,

and

Patricia Cotlow, Phillip Krass, Sharon LaComb, James Stein, and Theodore Suss, individually and on behalf of all Citizens of Minnesota similarly situated,

Intervening Plaintiffs,

v.

Joan Growe, Secretary of State of the State of Minnesota; Mark Lundgren, Carver County Auditor, individually and on behalf of all County Auditors of the State of Minnesota,

Defendants,

and

The Seventy-seventh Minnnesota State House of Representatives; and the Seventy-seventh Minnesota State Senate,

Defendant Intervenors,

CIVIL #4-91-202

ORDER DENYING STAY

and

Patrick O'Connor, Hennepin County Auditor, individually and on behalf of all County Auditors of the State of Minnesota,

Defendant Intervenor.

AND

Duane Benson, Terry Dempsey, Delores Hettig, Richard Harmon, David E. Peterson, E.M. Patricia Pidcock, and Frank Ringsmuth,

Plaintiffs,

v.

Joan Growe, Secretary of State of the State of Minnesota,

Defendant,

and

Patrick O'Connor, Hennepin County Auditor, individually and on behalf of all County Auditors of the State of Minnesota,

Defendant Intervenor.

Before DONALD P. LAY, United States Circuit Judge, HARRY H. MacLAUGHLIN, United States District Judge, and PAUL A. MAGNUSON, United States District Judge.

On August 21, 1991, this court unanimously issued an order which set January 20, 1992, as the latest date for the Legislature and the Governor of the State of Minnesota, i.e., the legislative process,[1] to adopt a valid plan for state legislative and congressional redistricting.[2] The failure of

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[1] *See Duxbury v. Donovan,* 272 Minn. 424, 432-33, 138 N.W.2d 692, 698 (1965), discussing *Smiley v. Holm,* 285 U.S. 355 (1932).

[2] *Emison v. Growe,* 4-91-202 (D. Minn. Aug. 21, 1991) (Memorandum and Order).

the state to so act would then cause this court to assume the obligation to issue a final plan in accordance with the principles set forth in *Scott v. Germano,* 381 U.S. 407 (1965). We announced that this court would not defer or abstain to the state agencies (including the state courts) after January 20, 1992, because any substantive review by the state court's appellate process would take too long to allow a valid plan to be approved and implemented in time for the 1992 election. All parties have agreed that a redistricting plan should be in place no later than March 1, 1992. As a result, this court needed sufficient time after January 20, 1992, to weigh the issues before it and provide relief if necessary.

The August 21, 1991, order noted that the federal complaint contained allegations of violations of the Voting Rights Act, 42 U.S.C. § 1973 (1988). It also pointed out that the state suit pending at that time[3] did not contain similar allegations, a fact which has been acknowledged before this court by the parties on numerous occasions. In the order filed on February 19, 1992, this court concluded that the plaintiffs had proven the existence of violations under the Voting Rights Act and that the proposed redistricting plan of the defendant intervenors did not remedy those violations.[4] That plan, as set forth in the constitutionally infirm Chapter 246[5] and its vetoed amendment Senate File 1596,[6] was unlawful in that it perpetuated the dilution of minority voting interests.

It is the belief of this court that our order of August 21,

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[3] *Cotlow v. Growe,* No. C8-91-985 (Minn. Special Redistricting Panel, filed Jan., 1991).

[4] *Emison,* 4-91-202 (D. Minn. Feb. 19, 1992) (Memorandum Opinion and Order).

[5] *Cotlow,* No. C8-91-985 (Minn. Special Redistricting Panel filed Oct. 1, 1991) (Pretrial Order No. 4 at 3).

[6] Following passage of state legislative and congressional redistricting legislation by the Minnesota Legislature on January 9, 1992, Governor Arne H. Carlson vetoed both measures the same day.

1991, provided sufficient notification to all parties as to the jurisdiction of this court and the attendant necessity of it to act on the matter of redistricting in the event that a valid plan was not adopted by the state legislative process on or before January 20, 1992. The attempt by the state court to implement a redistricting plan in November and December of 1991, prior to full consideration and debate of all proposed redistricting legislation by the legislative process, was clearly premature and derogated this court's jurisdictional statement. It was on this basis that this court issued its injunction on December 5, 1991. After the Legislature acted and the Governor vetoed Senate File 1596, the purpose of the injunction was served and thereafter dissolved by the Supreme Court of the United States.

The state court plan was developed by and received the partisan endorsement of the Democratic-Farmer-Labor legislative party. That plan was based on the seriously defective, unconstitutional statute Chapter 246. We could not discern any state policy from the unconstitutional Chapter 246 or the vetoed Senate File 1596. As a result, this court has proceeded to take action based on the only ascertainable expressions of state policy on redistricting, which are found in the Minnesota State Constitution[7] and the bipartisan concurrent resolution adopted by both houses of the Minnesota Legislature.[8]

As we have indicated, the plan proposed by the defendant intervenors and adopted by the state court is not only gerrymandered to protect incumbents in Minneapolis, foretelling the continued dilution of minority voting rights, but it also contains unwarranted population deviations and lacks compactness statewide. Our order of February 19, 1992, redistricting the state legislative and congressional districts of Minnesota must stand and

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[7] Minn. Const. art. IV, §§ 2 and 3.

[8] Minn. H.R. Con. Res. No. 2, 77th Leg., Reg. Sess. (1991) (cited in *Emison,* 4-91-202 (D. Minn. Feb. 19, 1992)) (Memorandum Opinion and Order at 38).

should be implemented.

THEREFORE, the motion of the defendant intervenors to stay the effect of our order dated February 19, 1992, is DENIED.

DATED: March 9, 1992.

BY THE COURT

Donald P. Lay

Paul A. Magnuson

Judge Harry H. MacLaughlin would grant the stay and dissents from the above order and strongly disagrees with the reasoning contained in said order. *See* dissent in *Emison v. Growe,* 4-91-202 (D. Minn. Feb. 19, 1992).

United States District Court
District of Minnesota
Fourth Division

DUANE BENSON, TERRY DEMPSEY, DELORES HETTIG, RICHARD HARMON, DAVID E. PETERSON, E. M. PATRICIA PIDCOCK, AND FRANK RINGSMUTH,

Plaintiffs,

v.

JOAN GROWE, SECRETARY OF STATE OF THE STATE OF MINNESOTA,

Defendant.

Court File No. 4-91-603

FIRST AMENDED COMPLAINT

Plaintiffs, for their claim for relief against Defendant, allege and state as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this action under the provisions of 28 U.S.C. Section 1331, 28 U.S.C. Section 1343(a) (3)-(4), 28 U.S.C. Section 2284, and 42 U.S.C. Sections 1983 and 1988. Declaratory and injunctive relief are appropriate under 28 U.S.C. Sections 2201 and 2202. This Court has jurisdiction over the state law claims in Count III of this Complaint under the doctrine of pendent jurisdiction.

2. Venue is proper under 28 U.S.C. Section 1391.

PARTIES

3. Plaintiffs are citizens and qualified voters of the United States and the State of Minnesota. Plaintiffs intend to vote in the 1992 elections for Minnesota State legislative and United States federal congressional representatives, have voted for Independent-Republican ("I-R") candidates in the past and intend to do so in the future. Plaintifss reside in the Minneapolis - St. Paul metropolitan area as well as various other localities throughout Minnesota.

4. Plaintiffs bring this action individually and on behalf of themselves and all other citizens and voters of the United States and the state of Minnesota who are similarly situated by denial of their legal rights through the current geographic boundary plan of State legislative districts as further stated below. The class of persons, as outlined above, to be denied their legal rights through residence in State legislative districts set forth in Senate File 1571, to be codified as Laws Minnesota, 1991, Chapter 246 ("Chapter 246"), attached hereto and made a part hereof as Exhibit A, is so numerous that joinder of all members is impracticable. The legality of the plan of State Legislative districts set forth in Chapter 246 presents questions of fact and law common to the class. The claims of the named individuals are typical of the claims of the members of the class. The individuals named as Plaintiffs will fairly and adequately protect the interests of the class. The prosecution of separate actions by individual members of the class would create a risk of inconsistent or varying adjudications that would establish incompatible standards of conduct for Defendant. Defendant has acted and will act on grounds generally applicable to the class, as previously stated, thereby making necessary the appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

5. Plaintiff Benson is the Minority Leader of the Minnesota State Senate. Plaintiff Dempsey is the Minority Leader of the Minnesota State House of Representatives.

Plaintiffs Benson and Dempsey bring this action as individuals and citizens, not in their capacities as elected representatives or minority caucaus leaders.

6. Defendant Joan Growe is the duly elected and qualified Secretary of State of the state of Minnesota. In her official capacity, pursuant to Minnesota Constitution, Article V, Section 4 and Article VII, Section 8, and Minnesota Statutes, Chapters 200-211B, she is the chief election officer of the state of Minnesota and is responsible for a variety of election duties, such as giving notice of offices to be voted on in the next election, accepting affidavits of candidacy from candidates for certain public offices, supervising the prepartion and distribution of ballots, issuing certificates of election to certain successful candidates, and receiving election returns.

7. Upon information and belief, Plaintiffs allege that Defendant intends to and will conduct her duties with respect to the 1992 primary and general elections for candidates for the Minnesota State Legislature based upon the geographic boundaries for State Senate and State Represenative districts as described in Chapter 246, unless restrained by this Court.

8. Plaintiffs allege that they intend to and will vote in the 1992 primary and general elections for State legislative representatives. If these elections are conducted on the basis of current State legislative districts, Plaintiffs and similarly situated voters and citizens will be denied their legal rights.

9. Notice of this action will be given to the Governor and Attorney General of the state of Minnesota by transmitting to each a copy of this First Amended Complaint by certified mail.

BACKGROUND

10. Minnesota's former State legislative districts in effect since 1982 were established by this Court in *LaComb v. Growe*, 541 F. Supp. 160 (D. Minn. 1982), and were

reflected in Minnesota Statutes Sections 2.019 and 2.042-2.702.

11. Upon information and belief, at all times material herein, the official 1990 Population Census as distributed by the United States Department of Commerce and as authorized under 12 U.S.C. Section 141 (1975) ("1990 Census") was used by the Minnesota State Legislature in determining population numbers for State legislative districts.

12. On May 16, 1991, and May 18, 1991, the Minnesota State Senate and Minnesota State House of Representatives, respectively, passed Senate File 1571, a bill setting forth a new plan of reapportioned State legislative district boundaries. The bill passed the Minnesota State Senate 38 yeas to 27 nays, with 38 legislators affiliated with the State Democratice Farmer - Labor Political Party Caucus ("DFL") voting for the bill and 20 legislators affiliated with the State Independent-Republican Political Party Caucus ("I-R") voting against the bill. I-R Political Party Caucus membership opposition to Senate File 1571 was unanimous, and seven DFL Political Party Caucus members joined I-R Senate members in voting against the bill. The bill passed the Minnesota State House 70 yeas to 61 nays. Sixty-nine DFL House members and 1 I-R House member voted for the bill, and 53 I-R House members voted against S.F. 1571 joined by 8 DFL House members.

13. On May 20, 1991, the Minnesota State Senate amended a 25 page "Technical Corrections Document [CORR-9]" onto the House "end of the legislative session" Minnesota State Revisor of Statutes bill (S.F. 1562). The amendment attempted to correct errors found by State DFL legislative members in the redistricting plan (S.F. 1571) previously passed by both bodies. The revisor's bill as amended by the "Technical Corrections Document [CORR-9]" was transmitted to the House, but the bill was not voted upon by the House. The Minnesota State Legislature thus adjourned without otherwise altering S.F. 1571, although the legislative history of this amendment certainly signifies knowledge, at least on the

part of the Senate majority members voting for CORR-9, that S.F. 1571 was a flawed State legislative redistricting plan.

14. S.F. 1571 was presented to the Governor of the state of Minnesota who announced publicly that he fully intended to veto the bill and did, in fact, attempt to veto S.F. 1571. The validity of the Governor's veto of the bill was challenged in *The Seventy-seventh Minnesota State Senate and Seventy-seventh Minnesota State House of Representatives v. Arne H. Carlson, Governor of Minnesota, and Joan A. Growe, Secretary of State of Minnesota,* (Ramsey County District Court File Number C3-91-7547). On August 2, 1991, the Ramsey County District Court, through its chief judge, ruled that the veto by the Governor was invalid and that Chapter 246 is now the law of the state of Minnesota.

15. A legal action has been filed in United States District Court (District of Minnesota) alleging that the former geographic boundaries of State legislative and United States federal congressional districts be declared unconstitutional and unlawful and asking that the legislative and congressional district boundaries be redrawn if the State legislature fails to do so. *See Emison v. Growe,* United States District Court for the District of Minnesota (Court File No. 4-91-202).

16. A separate action including redistricting has been filed in state court, *Cotlow v. Growe,* Hennepin County District Court (Court File No. MX 91-0015627), where the state court has been asked to enact new state legislative and U. S. federal congressional districts if the Minnesota State Legislature fails to do so.

COUNT I

EXCESSIVE POPULATION AND OTHER DEVIATIONS FROM MANDATORY STANDARDS

17. Paragraphs 1 through 16 of the Complaint are realleged and incorporated by reference as is fully stated herein.

18. Section 1 of the fourteenth amendment to the Constitution of the United States provides:

> No state shall make or enforce any law which shall abridge the priviledges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

This provision guarantees to the citizens of each state that their votes shall be equally as effective as any other votes cast in federal and state elections, and that State legislative representatives shall be elected on the basis of equal representation of the individual voters in the state. Further, this provision guarantees that State legislative representation shall be equally apportioned throughout a state in districts of equal population.

19. When establishing its former geographic boundary plan of State legislative districts in 1981, this Court in *LaComb v. Growe*, 541 F. Supp. 160 (D. Minn. 1982) (Civ. 4-81-152), by order dated December 29, 1981, attached hereto and made a part hereof as Exhibit B, adopted the mandatory criterion that deviations among State legislative districts in population equality could not exceed plus or minus 2%, and then only when necessary to facilitate implementation of other criteria.

20. On or about May 13, 1991, the Minnesota State House and Minnesota State Senate adopted unanimously, a concurrent resolution, House Concurrent Resolution 2, relating to legislative redistricting. This resolution established standards for legislative district geographic boundary plans, and set forth the standards and criteria

that the elected members of the State Legislature agreed to use in establishing a plan for State legislative districts. The resolution set forth 2% as the maximum permissible deviation from population equality as determined by the 1990 Census among legislative districts. A copy of the House Concurrent Resolution 2 is attached hereto as Exhibit C. and made a part hereof.

21. Chapter 246 contains excessive population deviations in the geographic boundaries of State legislative districts in violation of the federal constitutional protections, this Court's mandates, and State legislative mandates listed above as follows:

a. Senate District 30 has a population of 70,745 according to the 1990 Census, a deviation of *8.34% over* the ideal senate district population of 65,300.

b. House District 53B has a population of 28,160 according to the 1990 Census, a deviation of *13.75% under* the ideal house district population of 32,650.

c. Senate District 31 has a population of 59,452 according to the 1990 Census, a deviation of *8.96% under* the ideal for a senate district.

d. House District 30A has a population of 37,091 according to the 1990 Census, a deviation of *13.6% over* the ideal for a house district.

22. Chapter 246 also contains deviations from the federal constitutional protections, this Court's mandates and State legislative mandated criteria for State legislative district reapportionment plans stated above, because the geographical boundaries of certain areas in the State of Minnesota cannot be identified at all, including but not limited to the following:

a. The geographic boundaries between Senate Districts 6 and 7;

b. The geographic boundaries between Senate Districts 42 and 43;

c. The geographic boundaries between Senate Districts 50 and 51;

d. The geographic boundaries between House Districts 7A and 7B;

e. The geographic boundaries between House Districts 52A and 52B;

Therefore these State legislative districts have no determinable size, and the population deviations are impossible to calculate.

23. As stated above Chapter 246 contains populations deviations in the geographic boundaries of State legislative districts that violate Plaintiffs' rights as citizens of the United States as guaranteed by Section 1 of the Fourteenth Amendment to the Constitution of the United States as follows:

a. To have their votes in State legislative elections to be equally as effective as any other votes cast in State legislative elections;

b. That Minnesota State Senators and Minnesota State Representatives shall be elected on the basis of equal representation of the individual voters in the state;

c. That State legislative representatives shall be equally apportioned throughout the state in geographic boundary districts of equal population; and

d. That a citizen of the United States shall not be discriminated against as a voter because she or he resides in a more highly populated legislative district in contrast to the exaggeration of power for a citizen as a voter in a less populated legislative district.

24. As a result of these excessive population and other deviations from mandated standards as outlined above, unless Defendant is restrained from acting in furtherance

of her official duties in complying with Chapter 246, Plaintiffs and those similarly situated will be denied their rights as follows:

1. Those rights as citizen voters guaranteed by Section 1 of the Fourteenth Amendment to the United States Constitution under the doctrine of "one person-one vote";

2. Those rights as citizen voters established under the Court's order in *LaComb v. Growe, supra;* and

3. Those rights as citizen voters provided under the State legislature's own mandatory criteria for State legislative reapportionment as stated in House Concurrent Resolution 2.

COUNT II

OTHER DEFECTS

25. Paragraphs 1 through 16 and 18 through 24 of the Complaint are realleged and incorporated as if fully set forth herein.

26. Chapter 246 contains upon information and belief, geographic locations of State legislative districts that do not exist, and directions that cannot be followed including, but not limited to the following:

a. Places that do not exist such as Kimball Prairie and Lasco Township.

b. Directions that cannot be followed in determining geographic boundaries:

(1) At least six times where Chapter 246 states "easterly" when such direction stated is either erroneous or cannot logically be followed in determining the geographic boundary lines of State legislative districts;

(2) Four times where Chapter 246 states "westerly" when such direction stated is either erroneous or cannot logically be

followed in determining geographic boundary lines of State legislative districts; and

(3) Five times when Chapter 246 states "southwesterly" and "northeasterly" when such directions stated is either erroneous or cannot logically be followed in determining the geographic boundary lines of State legislative districts.

c. Streets that do not exist in the area being described such as Baker Lane, Homeword Hills Road, Noder Lane.

27. Chapter 246 contains many other flaws, errors, mistakes and defects in describing geographic boundaries for State legislative districts including but not limited to boundary line breakdowns, misnaming, and misspelling of boundary line locations, etc. These defects make it impossible for Defendant to perform her official duties as the Chief Election officer of the State of Minnesota to hold a state legislative election under the districts puportedly described therein, in turn depriving Plaintiffs and others similarly situated of their constitutional right to vote for state legislators in districts equally apportioned under the 1990 Census.

28. As a result, of these other defects in Chapter 246 as stated herein, no election can be held under Chapter 246, and therefore neither Chapter 246 nor any other existing legislation presents Defendant with a viable legislative districting plan based upon the 1990 Census. Therefore, unless Defendant is restrained from acting in furtherance of her official duties in accordance with Chapter 246, Plaintiffs and those similarly situated will be denied their rights as follows:

1. Those rights as citizen voters guaranteed by Section 1 of the Fourteenth Amendment to the United States Constitution under the doctrine of "one person-one vote";

2. Those rights as citizen voters established under this Court's order in *LaComb v. Growe, supra;* and

3. Those rights as citizen voters provided under the State legislature's own mandatory criteria for State legislative reapportionment as stated in House Concurrent Resolution 2.

COUNT III

NON-CONTIGUOUS AREAS AND SPLIT HOUSE DISTRICTS

29. Paragraphs 1 through 16, 18 through 24, and 26 and 27 of this Complaint are realleged and incorporated as is fully set forth herein.

30. Article IV, Section 3 of the Constitution of the State of Minnesota provides in relevant part:

> Senators shall be chosen by single districts of convenient, contiguous territory. No representative district shall be divided in the formation of a senate district.

Minn. Const. Art. IV, §3. This provision guarantees that election districts shall be comprised of contiguous and convenient areas.

31. When establishing its former geographic boundary plan of State legislative districts in 1981, this Court in *LaComb v. Growe,* 541 F. Supp. 160 (D. Minn. 1982) (Civ. 4-81-152), by order dated December 29, 1991, stated that districts shall be single member, compact, contiguous and no House district shall be divided in the formation of a Senate district.

32. On May 13, 1991, the Minnesota State Legislature, with bipartisan support, unanimously adopted Concurrent Resolution 2 which sets forth criteria that members of the legislature agreed to use in establishing a geographic boundary plan for State legislative districts. The resolution states that districts must be composed of convenient and

contiguous territory.

33. Chapter 246 contains numerous geographic boundary descriptions where Minnesota State Senate and House districts are comprised of non-contiguous areas and where house districts have been split in the formation of senate districts, including but not limited to the following:

a. The cities of New Prague, Eden Valley, Eden Prairie, Wayzata and Burnsville and the voters therein were assigned to two different Senate districts and two different House districts. Consequently, each of these representative districts is divided between two Senate districts in violation of Article III, Section 4 of the Constitution of the state of Minnesota.

b. Many legislative districts contain territory that is not contiguous. Senate District 30 completely surrounds portions of the towns of Cascade, Marion and Rochester, which are assigned to Senate District 31. Other districts containing non-contiguous territory include House Districts 14A, 34B, 30B, 45B, and 55B as well as Senate Districts 5, 17, 20, and 53.

34. Unless Defendant is restrained from acting in furtherance of her official duties in accordance with Chapter 246, these State legislative districts, which contain the non-contiguous and split House districts described in Chapter 246 will deny the Plaintiffs and others similarly situated their rights as follows:

1. Their rights as citizen voters as guaranteed by Section 3 of Article IV of the Constitution of the State of Minnesota;
2. Their rights as citizen voters established under this Court's order in *LaComb v. Growe, supra;* and
3. Their rights as citizen voters as provided under the State legislature's own mandatory criteria for State legislative reapportionment as stated in House Concurrent Resolution 2, which states that

a county, city/town should not be divided when it was not necessary to divide for equal population or convenient contiguous territory requirements.

WHEREFORE, Plaintiffs pray for the following relief:

a. That a special three judge panel be called to hear and determine this matter, pursuant to 28 U.S.C. Section 2284(a).

b. That the Court declare that the plan of legislative districts in Chapter 246 violates Plaintiffs' legally protected rights under the Constitution of the United States, the Constitution of the state of Minnesota, this Court's order in the case of *LaComb v. Growe, supra* and the Minnesota State Legislature's own mandated criteria for State legislative reapportionment plans as provided in Minnesota House Concurrent Resolution 2.

c. That the Court issue a permanent injunction and judgment decreeing that the Chapter 246 is not now a valid plan of State legislative apportionment.

d. That the Court issue a permanent injunction enjoining Defendant from taking any action related to carrying out her official duties in conducting primary or general elections for State legislative and congressional representatives based on the districts established in Chapter 246.

e. That the Court advise the federal and state courts currently involved in redistricting issues of the pendency of this action, and of its determination that this Court will determine the validity of Chapter 246.

f. That this Court consider this matter on an expedited basis as provided in 28 U.S.C. 2284(a).

g. That the Court order Defendants to pay Plaintiffs' reasonable attorneys' fees and expenses, expert fees and costs, and other expenses incurred in this action, pursuant to 42 U.S.C. Section 1988.

h. That the Court order such other relief as is just and equitable in the circumstances.

Dated: August 14, 1991

O'NEILL, BURKE, O'NEILL,
LEONARD AND O'BRIEN, LTD.

By: _____
Edward W. Gale, #33078
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United States District Court
District of Minnesota
Fourth Division

IN RE: REAPPORTIONMENT LITIGATION

James Emison, et al.,
Plaintiffs,
v. **CIVIL #4-91-202**
Joan Anderson Growe, Secretary of State of State of Minnesota,
Defendants.

Duane Benson, et al.,
Plaintiffs,
v. **CIVIL #4-91-603**
Joan Anderson Growe, Secretary of State of State of Minnesota,
Defendants.

NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT OF PLAINTIFFS DUANE BENSON ET AL.

TO: Joan Anderson Growe, Defendant, and her attorney, John Tunheim, Chief Deputy Attorney General, 102 State Capitol, St. Paul, Minnesota 55155; and John French and Michael Cheever, Attorneys for 77th Minnesota State House and Senate, Faegre & Benson, 2200 Norwest Center, 90 South Seventh Street, Minneapolis, MN 55402; and Peter Wattson, Attorney for 77th Minnesota State Senate, G-17 State Capitol, St. Paul, Minnesota 55155; Bruce D. Willis, Attorney for James Emison, et al., Popham Haik, 3300 Piper Jaffray Tower, 222 South Ninth St., Minneapolis,

MN 55402; Michael A. Fahey, Carver County Attorney, P. O. Box 12 Chaska, Minnesota 55318; Michael O. Freeman, Hennepin County Attorney, 2000 Government Center, Minneapolis, Minnesota 55487; and Alan Weinblatt, Attorney for Patricia Cotlow et al., Pioneer Building Suite 1616, 336 Robert Street, St. Paul, Minnesota 55101

PLEASE TAKE NOTICE, that plaintiffs, Duane Benson, Terry Dempsey, Delores Hettig, Richard Harmon, David E. Peterson, E.M. Patricia Pidcock, and Frank Ringsmuth, will bring the following Motion for hearing before the United States District Court, on such date and at such place as the Court may direct on or after November 8, 1991.

PLAINTIFFS BENSON, ET AL., MOTION FOR SUMMARY JUDGMENT

Plaintiffs Duane Benson, Terry Dempsey, Delores Hettig, Richard Harmon, David E. Peterson, E.M. Patricia Pidcock and Frank Ringsmuth (hereinafter referred to as "Benson"), by the undersigned attorneys, move for summary judgment against the defendant and the intervening defendant in the *Benson v. Growe* (Civil 4-91-603) (hereinafter referred to as the *Benson* case), portion of the consolidated cases above on the grounds that as shown by the pleadings, together with the Affidavit of Terry Dempsey attached to this Motion, there is no genuine issue as to any material fact, and therefore plaintiffs Benson, et al. are entitled to judgment against defendants and the intervening defendants in the consolidated cases above as a matter of law for the following reasons:

1. The pleadings of the parties in the *Benson* case indicate there is no genuine material factual dispute as to the claim by the plaintiffs that Laws Minnesota 1991, Chapter 246 (hereinafter referred to as "Chapter 246") violates plaintiffs' legally protected rights under Section 1 of the 14th Amendment to the Constitution of the United

States, Article IV, Section 2 and 3 of the Constitution of the State of Minnesota, the Court's order in the case of *LaComb v. Growe,* 541 F. Supp. 160 (D. Minn. 1982) (Civ. 4-81-152)), and the Minnesota State Legislature's unanimously adopted House Concurrent Resolution No. 2 dated May 13, 1991, all of which comprise standards and principles of law regulating Minnesota State Legislature reapportionment plans. The pleadings herein and the Affidavit of Duane Benson further show that Chapter 246 is not a constitutionally valid plan of state legislative reapportionment and is entitled to no further force or effect as a matter of law.

2. Based upon the uncontested record of the pleadings in this matter, and the State of Minnesota Special Redistricting District Judges Panel's Pretrial Order No. 4, dated October 1, 1991, involving the same defendants as present in this federal court action (as well as the Cotlow group of), which found Chapter 246 violated not only Article IV, Sections 2 and 3 of the Minnesota Constitution but section 1 of the Fourteenth Amendment to the United States Constitution, Chapter 246 is not a constitutionally valid legislative reapportionment plan.

This Motion for Summary Judgment is based upon the pleadings, the Affidavit of Duane Benson attached hereto and made a part herof, upon all of the files, records and

proceedings herein, and upon Rule 56 of Federal Rules of Civil Procedure.

Dated this 10 day of October, 1991

O'NEILL, BURKE, O'NEILL,
LEONARD AND O'BRIEN, LTD.

By _____
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United States District Court
District of Minnesota
Fourth Division

IN RE: REAPPORTIONMENT LITIGATION

James Emison, et al.,
Plaintiffs,
v.
Joan Anderson Growe, Secretary of State of State of Minnesota, et al.,
Defendants.

MASTER DOCKET
CIVIL #4-91-202

Duane Benson, et al.,
Plaintiffs,
v.
Joan Growe, Secretary of State of State of Minnesota,
Defendant.

CIVIL #4-91-603

MEMORANDUM BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT OF PLAINTIFFS DUANE BENSON ET AL.

I.
INTRODUCTION

Plaintiffs Benson, Dempsey, et al., in Case No. 4-91-603 in the above-encaptioned Master Docket, have moved this Court for summary judgment on the issues raised and relief requested in their First Amended Complaint (hereinafter, "Benson Complaint") relating to determination of the constitutionality of Laws Minnesota 1991, Chapter 246 ("Chapter 246"). The facts as pled in the Benson Complaint, and the Answers as filed by defendant

Growe and as proposed by the putative defendant-intervenor Minnesota legislature[1] in Case No. 4-91-603, raise no genuine issue as to any material fact. Chapter 246, on its face, violates the rights guaranteed the plaintiffs under the Constitution of the United States, the Constitution of the State of Minnesota, this Court's Order dated December 29, 1981 in the case of *LaComb v. Growe,* 541 F. Supp. 160 (D. Minn. 1982) (Civ. 4-81-152), and the Minnesota State Legislature's own standard adopted May 13, 1991, as part of House Concurrent Resolution No. 2, and reiterated most recently in the Legislature's Memorandum Regarding Reapportionment Criteria, dated October 1, 1991 ("Legislative Criteria Memorandum"), at p. 16.

Rule 56 of the *Federal Rules of Civil Procedure* applies a simple, two-part test for awarding summary judgment:

1. There is no genuine material factual dispute.
2. Based upon an uncontested record, the law entitles a moving party to relief.

The United States Supreme Court in three cases in 1986, *Celotex Corp. v. Catrett,* 477 U.S. 317, 106 S. Ct. 2548 (1986); *Anderson v. Liberty Lobbying, Inc.,* 477 U.S. 242, 106 S. Ct. 1348 (1986); and *Matlsushita Electric Industrial Corp. v. Zenith Radio Corp.,* 475 U.S. 574, 106 S. Ct. 1348 (1986), indicated strongly that summary judgment is a useful tool ". . . by which fatually insufficient claims or defenses could be isolated and prevented from going to trial with the attendant unwarranted consumption of public and private resources." *Celotex Corp. v. Catrett, supra,* at 327. For the reasons that follow, plaintiffs Benson, Dempsey, et al., believe the issues raised in the Benson Complaint lend themselves to resolution under Rule 56.

[1] This putative intervening defendant in Case No. 4-91-603 which characterizes itself as authorized on behalf of the Minnesota Legislature will be referred to herein as "the Legislature", without prejudice to the Benson plaintiffs' position that this party does not speak for the entire Legislature, and without admitting that such party has been properly authorized to represent any portion of or the entirety of the membership of the Minnesota Legislature in this proceeding.

II.

UNCONTROVERTED FACTS

A review of the pleadings show that defendants and intervening putative defendants in this consolidated case have not raised any real factual dispute as to allegations made in the Benson Complaint concerning the provision of Chapter 246.

A close examination of the pleadings will reveal the following:

1. The Benson Complaint, paragraph 21, discussed four specific population deviations which are found in Chapter 246 relating to Senate District 30 with a deviation of 8.34% over the ideal senate district; House District 53B with a deviation of 13.75% under the ideal house district; Senate District 31 with a deviation of 8.96% under the ideal senate district; and House District 30A with a deviation of 13.6% over the ideal house district.

Defendant Growe, in paragraph 21 of her answer, does not deny these population deviations, but defendant Growe affirmatively alleges technical errors and asks the Court to consider legislative intent and some proposed legislative amendments which have yet to be properly enacted by the Legislature and therefore, are of no force and effect.

The putative intervening defendants in paragraph 21 of their answer do not deny that these population deviations exist as contained in the Complaint, but deny that they are in violation of the United States Constitution. That Answer creates an issue of law for this Court to decide.

2. In paragraph 22 of the Benson Complaint, it is alleged that there are five situations in which geographic boundaries cannot be determined under Chapter 246, namely the geographic boundaries between Senate Districts 6 and 7; the geographic boundaries between Senate Districts 42 and 43; the geographic boundaries between Senate Districts 50 and 51; the geographic boundaries between House Districts 7A and 7B; and the geographic boundaries between House Districts 52A and 52B.

Defendant Growe's Answer, in paragraph 22, does not deny the allegations of paragraph 22, but affirmatively alleges that there are some technical errors that should be enacted in some proposed legislative amendments which have yet to be properly enacted by the Legislature and therefore, are of no force and effect.

The putative intervening defendants in their Answer to paragraph 22, do not deny the allegations of paragraph 2 in the Benson Complaint, but affirmatively allege that they claim that the unidentifiable geographic boundaries in Chapter 246 do not violate the United States Constitution. That Answer creates an issue of law for this Court to decide.

3. Paragraph 26 of the Benson Complaint indicates that under Chapter 246 some geographic locations of state legislative districts do not exist as stated in paragraph 26(a), geographic directions cannot be followed in determining geographic boundaries as stated in paragraph 26(b), and streets that do not exist are listed as geographic boundaries as stated in paragraph 26(c).

Defendant Growe, in her Answer to paragraph 26 of the Benson Complaint, admits that there are misspelled geographic locations and directions that cannot be followed literally, but affirmatively alleges that this could be corrected in some proposed legislative amendments which have yet to be properly enacted by the Legislature and therefore, are of no force and effect.

The putative intervening defendants in their Answer to paragraph 26, do not deny the defects outlined in the Benson Complaint, paragraph 26, and admit that Chapter 246 contains misspelled geographic locations and directions that cannot be followed literally, but affirmatively allege that this Court should consider some unspecified legislative intent and history of Chapter 246.

4. Paragraph 33 of the Benson Complaint alleges that under Chapter 246, five cities are assigned into two legislative districts, and that there are numerous situations of non-contiguous districts.

Defendant Growe, in her Answer does not deny the

allegations of paragraph 33, admits that Chapter 246 contains geographic boundary descriptions where legislative districts are comprised of non-contiguous areas, and where house districts have been split in the formation of senate district, but allege that this could be corrected in some proposed legislative amendments which have yet to be properly enacted by the Legislature and therefore, are of no force and effect.

The putative intervening defendants in paragraph 33 of their Answer, do not deny the allegations of paragraph 33 of the Benson Complaint, and admit that Chapter 246 contains geographic boundary descriptions where state legislative districts are comprised of non-contiguous areas where house districts have been split in the formation of senate districts. They affirmatively allege that this Court should consider some unalleged legislative intent and history of Chapter 246.

Based upon the facts as alleged herein, and comparison of the Benson Complaint to the answer of Defendant Growe and the proposed answer of putative intervening defendant Legislature, it can be seen that defendants do not have any real dispute as to the factual allegations in the Benson Complaint. Thus, this Court's determination of the constitutional validity of Chapter 246 is simply a matter of law, and the implications of that determination a matter reserved to this Court's inherent equitable jurisdiction.

III.

FEDERAL AND MINNESOTA CONSTITUTIONALITY

This Court has before it the analysis of Chapter 246 in the Affidavit of Terry Dempsey supporting the Benson Plaintiffs' Motion for Summary Judgment (the "Dempsey Affidavit"); the findings of the constitutional defects of Chapter 246 by the Special Minnesota District Court Redistricting Panel's Order of October 1, 1991 (hereinafter, "State Court Order No. 4"); the express or tacit admissions

of the Benson plaintiffs' allegations of constitutional defects by defendant Growe and the putative intervening defendant Legislature both in this action (see pages 2 - 6 *infra*) and in the aforementioned state court proceeding (see State Court Order No. 4 at 2); and, most important, the language of Chapter 246 itself. Based upon this body of evidence, there seems little doubt that Chapter 246 violates both the United States and State of Minnesota Constitutions.

The Minnesota District Court Special Redistricting Panel heard full arguments on the constitutional challenges to Chapter 246 prior to issuing of its Order of October 1, 1991. The government parties in this federal court Master Docket (other than the Carver County Auditor), and the Cotlow group of intervening plaintiffs, are all parties to that state court action, and these parties had their interests adequately represented therein, with full opportunity to address the same issue of whether Chapter 246 is constitutional. With knowledge of those positions, the Minnesota Special Redistricting Court Panel, a court of competent jurisdiction over to determine Chapter 246's constitutional issues, has unequivocally stated its opinion that Chapter 246 violates §1 of Fourteenth Amendment to the United States Constitution and Art. IV, §§2 and 3 of the Minnesota Constitution. State Court Order No. 4, at p. 8.

Although the language of Chapter 246 must be examined in conjunction with maps and population data to reflect the full extent of constitutional defects, the Dempsey Affidavit illustrates some of the problems with Chapter 246. Listed on pages 1 through 3 of the Dempsey Affidavit, are examples of twenty-five (25) illegal population deviations that now exist under Chapter 246. In addition to these defects, page 3 provides some examples of non-contiguous districts existing under Chapter 246. Furthermore, Chapter 246 is flawed and defective because it assigns the same people to two different senate districts. (See Dempsey Affidavit at page 4).

These examples provide ample evidence for this Court also to determine that the language of Chapter 246 makes its invalid under both the United States Constitution and the Minnesota Constitution. The real questions for this Court become whether any consideration should be given this unconstitutional bill, and when this decision should be made.

IV.

ROLE OF THIS COURT IN DETERMINING USE OF CONSTITUTIONALLY INVALID CHAPTER 246

Since Chapter 246, is violative of both the Minnesota State Constitution and the United States Constitution for reasons recited above, it becomes incumbent upon this Court to determine, also as a matter of law, the effect of the constitutionally invalid Chapter 246.

This Court, in its Memorandum, Decision and Order of August 21, 1991 (hereinafter, "Court's August 21 Order"), determined that at *that* time, it was premature to hold hearings on the validity of the present legislative plan. Since that time, however, the Benson plaintiffs respectfully submit that developments have taken place in the state court and elsewhere that make it imperative for this Court to rule on the constitutionality of this plan and the weight, if any, which the Panel of Special Masters should accord to this unconstitutional plan in drawing up its "backup" plan.

Despite its determination of unconstitutionality, the state court, at page 9 of the State Court Order No. 4, stated that, as an additional criterion, " . . . any court-adopted legislative plan be based upon [the constitutionally invalid] Chapter 246." The Benson plaintiffs, who were not represented in that state court matter, specifically ask this Court to prevent erosion of their federally protected rights by ruling forthwith that the unconstitutionally invalid Chapter 246 is void and as such should be given no force or effect.

This Court's August 21 Order further concluded (at pages 9 - 10) that both the state and federal courts should defer to the legislature to draw a valid redistricting plan unless the legislature fails to act in a timely fashion. This Court further stated at page 11 of its Order that the Court could not wait until January 21, 1992, to establish the machinery to effect a court plan in case the legislature is not able to adopt a correct constitutionally valid plan under which legislative elections can actually be held. Instead, this Court announced at page 11 of its August 21 Order that it would appoint Masters to develop a plan, in the event it should become necessary for this Court to determine the constitutionally of Chapter 246, and the effect, if any, of such constitutionally invalid plan.

The Benson plaintiffs respectfully submit that, in order to achieve the purposes underlying the Court's August 21 Order, it is imperative that the Court now make this determination, and to spell out the consequences of its determination. For reasons to be analyzed more fully herein, plaintiffs submit that Chapter 246 is so fundamentally flawed that any attempts to draw conclusions regarding legislative intent from even the facially valid provisions of this law will be unavailing. More important, plaintiffs submit that any such attempt will unnecessarily and unfairly distract the Special Master Panel from its essential task of assisting this Court in fashioning a principled, constitutional plan for redistricting.

In *Scott v. Germano,* 381 U.S. 407 (1965), the redistricting plans for the Illinois House and Senate were challenged in the Illinois court almost two years before the election. Upon appeal, the Illinois Supreme Court found the apportionment of Illinois state senate to be invalid. The Illinois Supreme Court, as the highest state court in Illinois, retained jurisdiction so that it could take affirmative action as necessary for a valid plan to be in place for the 1966 election. The Illinois Supreme Court expressed confidence that the legislature would perform

its duty to enact a constitutionally valid plan. At the same time, the United States District Court for the Northern District of Illinois ruled that the apportionment and the constitutional and statutory provisions in Illinois supporting the present (at that time) apportionment of assembly members and senators, were invalid under the 14th Amendment of the Constitution of the United States and the principles enunciated in the case of *Reynolds v. Simms,* 377 U.S. 533 (1964). The defendants in the federal district court case in Illinois then moved the federal district court to vacate its Order and stay further proceedings in light of the Illinois Supreme Court decision. The United States District Court refused to do so. Upon appeal, the United States Supreme Court held that the federal district court should have stayed its hand, since the Illinois Supreme Court had retained jurisdiction of the matter, pending legislative approval.

As this Court pointed out in its August 21 Order, at pages 4 - 10, the *Scott v. Germano* situation differs from that in the present case. This matter has not been heard by the Minnesota Supreme Court, and it is proper for this Court, as it has in both 1972 *Beens v. Erdahl,* 336 F. Supp. 715 (D. Minn. 1972), rev'd on other grounds sub nom. *Sixty-Seventh Minnesota State Senate v. Beens,* 406 U.S. 187 (1972); and in 1982 (*LaComb v. Growe,* 541 F. Supp. 160 (D. Minn. 1982), to retain jurisdiction of Minnesota state legislature reapportionment and to determine the effect of the constitutionally invalid legislative reapportionment plan as found in Chapter 246. Although the determination of unconstitutionality may at this time be almost a foregone conclusion, the Benson Plaintiffs respectfully submit that it is this Court which should determine the effect of that unconstitutionality on the Special Master Panel's (and, indirectly, the Legislature's) deliberations.

V.

THIS COURT NEED NOT, AND SHOULD NOT, UTILIZE CHAPTER 246 IN DEVELOPING ITS REDISTRICTING PLAN

Despite its virtual concession that Chapter 246 is unconstitutional, and the State Redistricting Panel's similar conclusion of unconstitutionality under both federal and state law, the Legislature has proposed to this Court the following criterion:

> 1. Any court-adopted plan for redrawing state legislative districts will be based on the current law, 1991 Minnesota Laws, chapter 246, and will deviate from that law only to the extent necessary to correct constitutional or statutory defects in the law.

Defendant Growe proposes a similar first criterion at page 3 of her proposed criteria:

> 1. The legislative districts shall be based on Minn. Laws 1991, ch. 246, and the court shall make only those changes necessary to correct defects in the law. Minn. Const., art. IV, §3; *White v. Weiser,* 412 U.S. 783, 795, 93 S. Ct. 2348, 2355 (1973).

For reasons to be discussed in this section, plaintiffs Benson, et al., respectfully suggest that adoption of this criterion would thrust this Court into a legislative role neither required by applicable judicial precedent, nor warranted by the broad constitutional defects found in Chapter 246.

State Court Order No. 4, at page 8, correctly notes that established case law compels courts to "adhere as closely as possible to the intent of the legislature...." However, in concluding (based upon *White v. Weiser, supra*) that the legislative intent is "embodied in the redistricting legislation," State Court Order No. 4 fails to take into account the differences between cases like *White* where minor, technical modifications in enacted legislation

could correct constitutional or other defects, and the situation at bar, where "correction" of Chapter 246 would necessarily involve a major rethinking of the entire legislative scheme.

In *White v. Weiser, supra,* the Supreme Court reviewed the actions of a lower court in Texas which had been confronted with three different redistricting plans. One of these plans was the plan which had been enacted by the Texas legislature. Under that plan, the state was divided into twenty-four districts, with an average deviation from the ideal district of 0.745% and a maximum deviation of 2.43% above and 1.7% below the ideal. *White v. Weiser, supra,* at 785. Although these percentage deviations were small, the court held that they were not unavoidable, and the districts were not as mathematically equal as reasonably possible.

The Supreme Court confirmed the lower Court's decision to reject the legislative plan. However, where the plan actually chosen by the lower court had only a marginally smaller maximum deviation (0.149% vs. 0.284%) than a third plan which essentially followed the district lines drawn up in legislative plan, and the plan chosen by the lower court substantially disregarded the configuration of the legislative plan's districts, the Supreme Court chose to implement the plan which adhered more closely to the districting preferences of the state legislature.

From these facts, it is clear that the court in *White v. Weiser* had little difficulty in ascertaining the legislative intent as they considered the redistricting plans in front of them. The legislative redistricting plan called for twenty-four districts. Of these twenty-four districts, the largest population deviation above the ideal was 2.43%. The greatest percentage deviation below the ideal was 1.7%. The average deviation of all districts from the ideal district of 466,530 was 0.745%, or 3,421 persons. Thus, only minor, technical modifications were needed to make the legislature redistricting plan constitutionally sound.

In contrast, when one considers Chapter 246, it is impossible for anyone to discern what the legislative

intent was in that redistricting plan. Comparing the maximum population deviation of 2.43% from the ideal that existed in *White* to the quite larger population deviations existing in Chapter 246, it is clear that Chapter 246 cannot serve as a foundation for any future reapportionment plans. The following is merely a partial list of the flaws contained in Chapter 246. (For a complete list, see the Dempsey Affidavit itself):

- Senate District 30 consists of the City of Rochester, whose population according to the 1990 Census is 70,745. That makes it *8.34% above* the ideal.
- Senate District 31 contains 59,452 people. This is *8.96% below* the ideal.
- House District 30A contains 37,091 people. This is *13.605% above* the ideal.
- House District 31A contains 26,830 people. This is *17.83% below* the ideal.
- House District 34A contains 20,364 people. This is *37.635% below* the ideal.
- House District 34B contains 44,669 people. This is *36.81% above* the ideal.
- House District 43A appears to contain 17,925 people. This is *45.10% below* the ideal.

The problems of Chapter 246 do not end with these extreme and unacceptable population deviations. Chapter 246 has major errors in at least eight noncontiguous districts (See Dempsey Affidavit at page 3). Chapter 246 also contains at least four instances where the same people have been assigned to two different Senate Districts (See Dempsey Affidavit at page 4). Because of all of these flaws, it is simply impossible to discern what the legislature intended in this redistricting plan.

Furthermore, the language in *White v. Weiser, supra,* suggests that federal courts should not always follow state policy. For example, federal courts should not follow

state policy whenever adherence to state policy detracts from the requirements of the federal constitution. *White v. Weiser, supra,* at 795. Similarly, "[d]istrict [c]ourts should defer to state policy in fashioning relief only where that policy is consistent with constitutional norms and is not in itself vulnerable to legal challenge". *Id.* at 797. Even the concurring opinion, authored by Justice Marshall, shared the thoughts and analysis of the majority in *White v. Weiser:* "In my opinion, the judicial remedial process in the reapportionment area -- as in any area -- should be a fastidiously neutral and objective one, free of all political considerations and guided only by the controlling constitutional principle of strict accuracy and representative apportionment." *Id.* at 799 (Marshall, J., concurring).

The Legislature's Criteria Memorandum, also cited *Upham v. Seamon,* 456 U.S. 37 (1982), in support for the Legislature's position that any court plan should be based on Chapter 246. The facts of *Upham v. Seamon,* however, just as the facts of *White v. Weiser,* are distinguishable from the present case. Unlike Chapter 246, the legislative plan presented to the court in *Seamon* contained only a few flaws, thus allowing the court to perceive and preserve the legislative intent by making only a few changes in the plan. In *Upham v. Seamon,* the Texas legislature's reapportionment plan contained twenty-seven congressional districts, of which only two were found to be invalid by the Attorney General during a pre-clearance examination for *Voting Rights Act* compliance. The federal district court corrected these two unacceptable districts, but instead of retaining the rest of the plan as drawn up by the legislature, the court devised its own districts for one county. Upon these facts, the Supreme Court held that the district court's decision to devise its own districts for that one county area was erroneous. The Supreme Court determined that, absent any constitutional or statutory violations with the districts in the one county, the district court should have deferred to the Texas legislature's judgment reflected in their plan for the

districts in that county.

Thus, the facts of *Upham v. Seamon* show that only a few minor changes had to be made to carry out the intent of the legislature. That is simply not true in the present case, because of the numerous flaws and defects in Chapter 246. One type of flaw, major population disparities, requires by its very nature corrections not only in the affected districts, but in at least one and perhaps more districts including districts without any apparent problems of their own. This is because of the fact that if districts with opposite population deviations cannot be identified in districts contiguous to the flawed districts, more distant districts from each flawed district would have to be identified. This iterative process, however, demonstrates the impossibility of determining any cognizable legislative intent from what remains of Chapter 246. Simply stated, any plan resulting from such extensive redrafting would itself involve assumptions that might well have no relationship to what the legislature would have agreed upon had it been forced itself to deal with the population deviation and other defects recited in the Benson Complaint.

The Legislature's Criteria Memorandum, at pages 9 - 10, claims that the bulk of the legislature's plan can be preserved on the basis of being "severable" from the unconstitutionally drawn, or otherwise defective, districts. However, the only support offered for this proposition is the self-styled "legislative history" and background contained in an August 25, 1991, memorandum of Senate Counsel Peter S. Wattson to Senator Lawrence J. Pogemiller (hereinafter, "Wattson Memorandum"). Analysis of the Wattson Memorandum demonstrates that even if viewed as an Affidavit, the Wattson Memorandum fails to meet appropriate standards for consideration by this Court for at least four separate reasons, two evidentiary, two substantive.

First, the Wattson Memorandum, taken as a whole, falls well short of standards normally required by courts

for consideration of materials as valid legislative history. One of these standards relates to timing. Prepared after the Benson Complaint was filed, the Wattson Memorandum clearly lacks the characteristic of preparation in the ordinary course of business (as opposed to preparation in anticipation of litigation) that might give some limited weight to materials more frequently offered as evidence of legislative history such as the regularly recorded (albeit often self-serving) statements on legislative committee hearing tapes.

Secondly, since State Court Order No. 4 rejected Committee-passed bills as expressive of intent of the Legislature as a whole, it stands to reason *a fortiorari* that Mr. Wattson's recent recollection of what Senator Pogemiller (one of 201 elected state legislative members) might have said or thought last May is even less reflective of what the Legislature as a whole might do or wish to do to enact a constitutionally valid redistricting bill.

Page 6 of the Wattson Memorandum illustrates the third and fourth, more substantive type of defects in the analysis contained in the Wattson Memorandum. To begin with, it suggests that Senator Pogemiller may at least at one time have personally intended to propose correcting the significant upward deviation in Senate District 30's population by cutting the City of Rochester "on the south, as far up as you needed to in order to bring the population of the remainder within the two percent standard." Wattson Memorandum at page 10. However, doing this might itself have resulted in excess population deviation in the district immediately south of Senate District 30, creating additional questions of legislative intent as to what to do with this new problem. Although the principle of construing bills where possible to preserve their constitutionality may be hornbook law, application of that principle to this situation cannot be accomplished even with reference to Senator Pogemiller's own expressed views, much less with reference to any view which can fairly be said to reflect the intent of the legislature as a whole.

The fourth problem with the Wattson Memorandum is even more troubling. It presupposes that a two percent deviation is acceptable, not as an unfortunate side effect of respecting political subdivision boundaries, or other neutral criteria, but as a conscious plan. (See Wattson Memorandum at page 2, 6). The Benson plaintiffs respectfully suggest that ascribing such intent to Chapter 246 ought by itself to invalidate any deference to this legislation, or proposed amendments thereto, which reflect disregard of the rights of Rochester and other Minnesota citizens to equal legislative representation. It also is inconsistent with the Legislature's own proposed criterion No. 5 (page 3 of Legislature's Criteria Memorandum), unless the Legislature is seriously proposing that this Court and its Special Master Panel should subordinate the principles of *Reynolds v. Simms, supra,* to the purported Wattson-Pogemiller proxy for legislative intent as to these citizens' rights to equal representation.

VI.

THIS COURT SHOULD PROMPTLY AWARD THE BENSON PLAINTIFFS THE RELIEF REQUESTED IN THEIR COMPLAINT

For the foregoing reasons, the Benson Plaintiffs are entitled to the relief that they requested in paragraphs c through e of the prayer for relief: judgment of this Court decreeing the invalidity of Chapter 246 both in and of itself, and as the basis for any consideration by the Court and its special master panel as reflective of legislative intent. The question before the Court is whether the "circumstances" justifying this Court's deferral of action referred to this Court on page 10 of its August 21, 1991, Order have changed sufficiently that paragraph f of plaintiffs' requested relief seeking an expedited order to this effect, should also be granted.

On this question, plaintiffs respectfully submit that State Court Order No. 4 makes several specific findings in

addition to its adjudication of unconstitutionality which at the very least undercuts the factual basis underlying this Court's earlier determination to await possible, further legislative action before considering Chapter 246's usefulness in the redistricting process. In particular, at page 6 of State Court Order No. 4, the state panel relies upon specific factual conclusions in confirming its determination to proceed on a timetable resulting in a final adjudication of this matter during 1991. At page 6, the Court in State Court Order No. 4 finds that doing so is necessary to recognize the interests of preserving "proper and timely voting procedures to ensure the state's constitutional government."

A second changed circumstances arises from the Dempsey Affidavit's recitation of the unlikelihood of any legislative action based upon the general plan of Chapter 246 prior to January 25, 1992. This allegation sharply contradicts the legislature's obviously self-serving earlier contention, that the legislature will take action by January 20, 1991. Which in the absence of contrary evidence this Court accepted in its August 26 order, at page 10, as presumably made "in good faith."

The contrary facts which the Dempsey Affidavit now makes available to this Court combine with the state court's findings of urgency in favor of this Court's granting paragraph f of the Benson plaintiffs' claim for relief: that this Court consider the constitutional issues raised by plaintiffs in this matter and reach its determination of this matter, in conjunction with its panel of Special Masters, on an expedited basis to achieve a constitutionally acceptable plan. In taking this action, the Court can rely upon those same types of principles and criteria which guided it in its earlier determinations assuring constitutionally valid reapportionment plans following the 1970 and 1980 censuses. These criteria will respect political subdivisions and communities of interest, state constitutional mandates regarding contiguity and indivisibility of senate districts, and federal guidelines

requiring equal proportionate voting rights for all citizens of Minnesota. Combined with its unique powers to assure the rights of all Minnesotans under the federal *Voting Rights Act,* plaintiffs respectfully submit that granting summary relief in the form requested in the Benson Complaint as supplemented by this Memorandum, on as reasonably expedited a basis as possible, will afford all Minnesotans the constitutional protections to the right of franchise guaranteed them under federal and state constitutions and applicable federal law.

VII.

CONCLUSION

The legislative districts proposed in Chapter 246 are not only unconstitutionally, but so fundamentally inconsistent with established constitutional guidelines that no legislative intent can be rationally ascertained as to how the legislature would modify Chapter 246. Since Chapter 246's constitutionality is no longer seriously at issue, and because that legislation lacks any predictive value or other usefulness in ascertaining legislative intent, this Court should act promptly to develop a plan which embodies established principles of constitutional fairness.

Dated: 10/10/91

O'NEILL, BURKE, O'NEILL,
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United States District Court
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CIVIL #4-91-603

AFFIDAVIT OF REPRESENTATIVE TERRY DEMPSEY.

1. I am the minority leader for the Independent-Republican House caucus.

2. I am a member of the Minnesota House of Representatives Redistricting Committee.

3. I supervise caucus staff that has worked on redistricting issues.

4. Chapter 246 was presented to the House Redistricting committee very late in the 1991 session. In fact, the bill that became Chapter 246 was introduced after the committee deadline for bill hearings, and consequently had to receive special Rules Committee approval in order to reach the floor of the House.

5. During the period in which the bill was being drafted and passed, the redistricting computer system had numberous programming problems.

6. Before any redistricting plan was considered, the legislature passed a concurrent resolution stating that districts should not deviate from the ideal population by more than two percent, plus or minus.

7. The ideal state Senate District is 65,300.

8. The ideal House District is 32,650.

9. Senate District 30 consists of the city of Rochester, whose population according to the 1990 census is 70,745. That makes it 8.34% above the ideal. It is unclear how the legislative would correct this defect, since there is no legislative intent evident and a correction could be accomplished by giving some or all of this excess population to any of the Senate Districts that are near to Rochester, including Senate Districts 28, 29 or 31, and making additional adjustments that such a change to any redistricting plan requires.

10. Senate District 31, within which my co-Plaintiff Senator Duane Benson resides, contains 59,452 people. This is a 8.96% below the ideal. Again there is no legislative intent related to this problem and it is unclear how the legislative would correct this, since the alternatives include adding population from Senate Districts 27, 28, 29, 30 or 32, or a combination of those, and making additional adjustments to those districts.

11. House District 3A appears to contain 31,939 people. This is 2.18% below ideal.

12. House District 3B appears to contain 33,331 people. This is 2.09% above the ideal.

13. House District 9B contains 33,731 people. This is 3.31% above the ideal.

14. House District 16B appears to contain 33,389 people. This is 2.26% above the ideal.

15. House District 19B contains 31,994 people. This is 2.01% below the ideal.

16. House District 30A contains 37,091 people. This is 13.60% above the ideal.

17. House District 30B contains 33,654 people. This is 3.08% above the ideal.

18. House District 31A contains 26,830 people. This is 17.83% below the ideal.

19. House District 34A contains 20,369 people. This is 37.63% below the ideal.

20. House District 34B contains 44,669 people. This is 36.81% above the ideal.

21. House District 43A appears to contain 17,925 people. This is 45.10% below the ideal.

22. House District 43B appears to contain 46,836 people. This is 43.45% above the ideal.

23. House District 45A contains 29,349 people. This is 10.11% below the ideal.

24. House District 45B contains 36,129 people. This is 10.66% above the ideal.

25. House District 47A appears to contain 37,160 people. This is 13.81% above the ideal.

26. House District 47B appears to contain 28,400 people. This is 13.02% below the ideal.

27. House District 51A appears to contain 33,350 people. This is 2.14% above the ideal.

28. House District 53A appears to contain 36,484 people. This is 11.74% above the ideal.

29. House District 53B appears to contain 28,160 people. This is 13.75% below the ideal.

30. House District 55A appears to contain 33,329 people. This is 2.08% above the ideal.

31. House District 59B appears to contain 34,959 people. This is 7.07% above the ideal.

32. House District 61A appears to contain 30,684 people. This is 6.02% below the ideal.

33. House District 62B appears to contain 33,348 people. This is 2.14% above the ideal.

34. The range of these deviations is 88.55%, or 22.11 times the overall range the legislature impose upon itself.

35. The redistricting software purchased by the legislature and used by the four caucuses contains a built-

in alarm feature that automatically warns the user if the areas added to the district being worked on were non-contiguous or if there was a chance that this was the case. Despite this, many districts contain noncontiguous geography.

36. Senate District 5 contains Angora Township, which is surrounded by area that are no ascribed to Senate District 5 but are within St. Louis County. Since Senate District 6 assigns the remainder of St. Louis County to Senate District 6 by exception, meaning that if anything in the county is not assigned to another Senate District it is in Senate District 6, the area surrounding Angora Township is in Senate District 6.

37. Senate District 17 includes by exception the city Braham in Kanabec County. Braham is surrounded by Senate District 18 but not named in the description of that district. Previously Senate District 17 is said to include all of Kanabec County not included in Senate District 18, Which means Braham.

38. Senate District 20 is also defined by exception. As such, it includes the portion of the cities of Hanover and Dayton that are in Wright County but not specifically assigned to Senate Districts 19, 33, or 34.

39. Senate District 26 is assigned by exception the portion of the city of North Mankato that is not included in Senate District 24. This portion of North Mankato is non-contiguous to the rest of the area within Senate District 26.

40. Senate District 31 was assigned that portion of Olmstead County not included in Senate District 28 or 30. This includes pieces of Cascade, Rochester, and Marion Townships that are completely surrounded by Senate District 30 but not assigned to Senate District 30. Those parts of those townships are thus noncontiguous to Senate District 31.

41. Senate District 34 is assigned by exception any leftovers in Hennepin County. Since the portion of Chanhassen that is in Hennepin County was not assigned

to Senate District 42 or 43 it becomes a noncontiguous portion of Senate District 34.

42. House District 43B is defined to be the portion of Senate District 43 not included in House District 43A. Senate District 43 contains the city of Wayzata, which is not included in House District 43A. Wayzata thus becomes a noncontiguous portion of House District 43B.

43. House District 53A is defined to be the portion of Senate District 53 not included in House District 53B. Senate District 53 contains the cities of Little Canada and Maplewood, which are not included in House District 53B. They thus become a non- contiguous portion of House District 53A.

44. Chapter 246 also contains at least four instances where the same people have been assigned to two different Senate Districts.

45. Senate District 20 contains the city of Eden Valley. By exception, Senate District 14 includes the area in Stearns County not included in Senate Districts 10, 13, or 16. Since Eden Valley is in Sterns County, that description also places it into Senate District 14.

46. Senate District 25 includes the city of New Prague. A portion of New Prague is in Scott County. Senate District 35 includes the portion of Scott County not assigned to Senate Districts 37 or 41. Thus the portion of New Prague is Scott County is also assigned to Senate District 35.

47. Senate District 41 includes the portion of Burnsville not contained in Senate District's 36 or 38. However Senate District 37 is also defined by exception, giving it what is left of Dakota County after subtracting Senate District's 25, 29, 36, 38 and 39. Thus the portion of Burnsville not in Senate District 36 or Senate District 38 is in both Senate District's 41 and 37.

48. Senate District 43 includes the city of Wayzata. Senate District 45 also specifically includes the city of Wayzata.

49. I have been informed that as part of their Answer

the intervening defendants have stated that legislation amending the defination in Chapter 246 will be considered by the Minnesota Legislature in January, 1992.

50. I have been informed that they expect these amendments to pass.

51. I can state as leader of the Independent-Republican House caucus what my views are.

52. In my opinion, the Legislative Branch and the Executive Branch are at an impasse with respect to amending Chapter 246 to achieve an equitable re-districting bill. Even if the proposed amendments to Chapter 246 which have been passed by the House Redistricting Committee would, if passed by the Legislature, result in a constitutionally valid law, it is my opinion that the Governor would veto such a bill because it would retain the same overall unfairness for Minnesota's citzens which caused him to attempt to veto Chapter 246. In such a situation, the 55 members of the House Independent-Republican caucus would provide more than enough votes to sustain any veto override attempt, which would require ninety (90) affirmative votes out of the 134 member of the Minnesota House.

FURTHER AFFIANT SAYETH NAUGHT.

Representative Terry Dempsey

Subscribed and sworn to before me this 10th day of October, 1991.

Notary Public

United States District Court
District of Minnesota
Fourth Division

IN RE: REAPPORTIONMENT LITIGATION

James Emison, et al.,

Plaintiffs,

v.

Joan Anderson Growe, Secretary of State of State of Minnesota, et al.,

Defendants.

MASTER DOCKET
CIVIL #4-91-202

Duane Benson, et al.,

Plaintiffs,

v.

Joan Growe, Secretary of State of State of Minnesota,

Defendant.

CIVIL #4-91-603

AFFIDAVIT OF GOVERNOR ARNE H. CARLSON

1. I am the Governor of the State of Minnesota.

2. It is my understanding that this Court in its Order dated August 21, 1991, has noted the intention of the Defendants Minnesota Legislature and Minnesota Secretary of State to amend Laws Minnesota, 1991, Chapter 246 in devising a legislative reapportionment plan that will be presented to the legislative in January, 1992.

3. During the 1991 session of the Minnesota legislature, the legislature passed Senate File 1571, a bill redrawing the state legislative districts. I attempted to veto that bill because, in my opinion, it contained fundamental problems, including what I viewed as obvious uncon-

stitutional provisions as well as numerous other technical and substantive flaws which affected the overall fairness, or lack thereof, of the plan to all Minnesota citizens.

4. Even though the Ramsey County District Court ruled that my attempt to veto Senate File 1571 was ineffective, and this legislation was enrolled as Chapter 246 of the 1991 Minnesota Session Laws, my fundamental and serious concerns about the bill remain. Therefore, I will not provide my needed signature as Governor and will in fact veto any bill which I receive for consideration from the Minnesota legislature from the 1992 session pursuant to Section 23 of Article 4 of the Minnesota Constitution, unless such bill: (a) changes the basic provisions of Chapter 246 in a way which corrects the fundamental problems I believed that the structure of the bill had when I first attempted to veto Senate File 1571; and (b) provides the essential element of fairness needed for all Minnesotans in any state legislative re-apportionment plan.

FURTHER AFFIANT SAYETH NAUGHT.

Governor Arne H. Carlson

Subscribed and sworn to before me this 10th day of October, 1991.

Notary Public

STATE OF MINNESOTA
SPECIAL REDISTRICTING PANEL
MX 91-001562

Patricia Cotlow, Phillip Krass, Sharon LaComb, James Stein and Theodore Suss, individually and on behalf of all Citizens of Minnesota similarly situated, *Plaintiffs,* and John Walker, Howard Miller, Don Sudor and Nkajlo Vangh, *Plaintiff-Interveners,* vs. Joan Growe, Secretary of State of Minnesota; and Dale G. Folstad, Hennepin County Auditor, individually and on behalf of all Minnesota county chief election officers, *Defendants,* and The Seventy-seventh Minnesota State House of Representatives and the Seventy-seventh Minnesota State Senate, *Defendant-Interveners.*	)	MEMORANDUM OF PLAINTIFF-INTERVENERS REGARDING EXCLUSIVE FEDERAL JURISDICTION OVER VOTING RIGHTS ACT CLAIMS

INTRODUCTION

This memorandum is submitted by plaintiff-interveners in response to the Panel's original request for briefing on exclusive federal court jurisdiction under the Voting Rights Act. In light of the Panel's recent order declaring Chapter 246 to be in violation of both the United States and Minnesota Constitutions, the question of whether the Voting Rights Act is implicated by Chapter 246 is now moot. Nevertheless, plaintiff-interveners maintin that jurisdiction over any Voting Rights Act claims lies

exclusively with the federal courts, both because of express Voting Rights Act provisions and because the federal interests to be protected by the Voting Rights Act are clearly incompatible with state court jurisdiction.

ARGUMENT

I. *Application of the Voting Rights Act to Chapter 246 Is Moot by Reason of this Panel's Finding That Chapter 246 Is Unconstitutional.*

At the time of the last hearing, the Panel requested discussion of the application of the Voting Rights Act to Chapter 246. In Pretrial Order No. 4, however, the Panel has found that Minnesota Laws 1991, Ch. 246, the legislative redistricting plan, is in violation of both the Minnesota and United States Constitutions. *See* Pretrial Order No. 4, P. no. 1. Since Chapter 246 has been declared to be unconstitutional, it cannot be used as a plan of redistricting for the state of Minnesota, and the question of application of the Voting Rights Act to Chapter 246 is now academic. However, there still remains the larger question of whether a state court has jurisdiction to determine if a redistricting plan violates Section 2 of the Voting Rights Act, and plaintiff-interveners submit that it does not.

II. *The Panel Lacks Jurisdiction to Consider Voting Rights Act Issues.*

The other parties to this case have contended in the ongoing federal action considering Minnesota redistricting that this Panel, as well as the federal panel, is empowered to resolve any Voting Rights Act claims that may be presented. In the federal action, these parties cited *Gulf Offshore Co. v. Mobil Oil Corp.*, 453 U.S. 473, 477-78 (1981), for the proposition that there is concurrent state and federal jurisdiction over alleged violations of the Voting Rights Act. Such a contention is superficial and ignores both the express and implicit limitations on state court jurisdiction to adjudicate Voting Rights Act claims.

The *Gulf Offshore Co.* decision specifically notes that the exercise of concurrent state court jurisdiction over cases arising under federal law is directly limited by congressional restrictions on the use of that power, whether explicit or implicit. *See Gulf Offshore Co.*, 453 U.S. 473, 478. The United States Supreme Court instructed that state court jurisdiction over federal law cases is rebutted by "an explicit statutory directive, by unmistakable implication from legislative history, or by a clear incompatibility between state-court jurisdiction and federal interests." *Id.* All three considerations compel a conclusion that federal jurisdiction over Voting Rights Act issues is exclusive.

A. *The Voting Rights Act Expressly Provides for Exclusive Federal Jurisdiction Concerning Violation of Section 2.*

The language of the Voting Rights Act confirms that any claimed violations of the Act are within the exclusive jurisdiction of the federal courts. The Act expressly states:

> The *district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this section* [providing for civil remedies for violations of Voting Rights Act sections, including section 2] and shall exercise the same without regard to whether a person asserting rights under the provisions subchapters I-A to I-C of this chapter shall have exhausted any administrative or other remedies that may be provided by law.

42 U.S.C. § 1973j(f) (emphasis added); *see also Donnell v. United States*, 682 F.2d 240 (D.C.D.C.), *cert. denied* 451 U.S. 1002 (1982) (private citizens encouraged to act as private attorneys general to enforce Voting Rights Act).

State court decisions as well have recognized that claims arising under Section 2 of the Voting Rights Act are within the exclusive jurisdiction of federal courts. *See, e.g., City of Birmingham v. Graffeo*, 551 So. 2d 357, 366 (Ala. 1989); *Mitchell v. City of Prichard*, 538 So. 2d 1, (Ala.

1988); *Ortiz v. Thompson,* 604 S.W.2d 443, 445-446 (Tex. 1980).

B *Congress Intended That Federal Courts Would Determine Violations of the Voting Rights Act.*

Exclusive federal jurisdiction over Voting Rights Act claims is also fully in accord with legislative intent. The legislative history of the Voting Rights Act outlines in extensive detail prior failed efforts to effectuate the purposes of the fifteenth amendment. *See* H. Rep. No. 439, *reprinted in* 1965 U.S. Code Cong. & Admin. News 2437, 2439-2444, 2449-2450, 2547-2550. That discussion clearly states the conflict between federal interests in the right to vote and state actions taken in denigration of both that right and the protections afforded in furtherance of it. *Id.*

Congressional intent to remedy state actions is also reflected in United States Supreme Court decisions. *See, e.g., Allen v. State Board of Elections,* 393 U.S. 544, 548, 562-63 (1969); *South Carolina v. Katzenbach,* 383 U.S. 301, 308-314 (1966). In both of these cases, the Supreme Court made express note of Congress' desire to "rid the country of racial discrimination in voting." *Allen,* 393 U.S. at 548; *Katzenbach,* 383 U.S. at 308-09. The Court in *Katzenbach* discussed the prior inability of Congress and the courts to remedy these problems, and it identified the cause of that difficulty as being the burden of enforcement in widely disparate state jurisdictions. *Katzenbach,* 383 U.S. at 314.

In analyzing congressional intent, the United States Supreme Court in *Allen* made note of the unique difficulties arising from Voting Rights Act issues. In particular, the Court noted the impact of the Voting Rights Act and its requirements on federal-state relations. *See Allen,* 393 U.S. at 562. In that case, the Court based its finding of exclusive federal court jurisdiction over § 5 matters on the need to minimize such disputes between federal and state jurisdictions. *Id.* at 562-63.

The foregoing cases and the considerations they address

underscore congressional intent that there by exclusive federal court general adjudicatory power over Voting Rights Act issues.

C. *Concurrent State Court Jurisdiction of Voting Rights Act Claims Is Incompatible with Federal Court Jurisdiction.*

The Voting Rights Act was established to remedy historic discriminatory voting practices by states. The fundamental federal interest in the right to vote is incompatible with concurrent state court jurisdiction over Voting Rights Act violations by the state. Such issues are appropriately left to federal courts, which can act apart from state and local interests and actions and which can insure uniform application of federal law standards and interpretations.

The Act's provisions make it clear that the Voting Rights Act is to be enforced by federal courts. First, as noted above, § 12(f) expressly grants to United States district courts jurisdiction over proceedings instituted to enforce sections of the Act, including § 2. *See* 42 U.S.C. § 1973j(f). In addition, § 1973 provides additional or alternative means by which to enforce voting rights, including the use of three-judge federal district court panels with direct appeal to the Supreme Court (§§ 1973b(a) & 1973(c); appointment of federal examiners (§ 1973a); and enforcement through the office of the Attorney General (§§ 1973h(b), 1973j(d) - (e)).

The most recent legislative history of the Act provides additional support for the proposition of exclusive federal jurisdiction. By way of example, the Report of the Committee on the Judiciary for the 1982 amendments to the Voting Rights Act is replete with discussion of the role of the federal judiciary in adjudicating violations of § 2 of the Act. *See* S. Rep. No. 97-417, *reprinted in* 1982 U.S. Code Cong. Admin. News 177, 208-10, 219, 276, 307 (all discussing the federal court's role and responsibilities in adjudication of Voting Rights Act claims under § 2). That report specifically states at one point that "the new

Voting Rights Act will also enhance enormously the role of the Federal judiciary in State and municipal governmental process." *Id.* at 276.

Congress clearly intended that federal courts would be uded to remedy discrimination that typically occurs as the result of state action. Voting is a fundamental right of great federal interest, and the Voting Rights Act was enacted as a federal tool to protect that right. The incompatibility of that federal interest with state court adjudication, along with the Voting Rights Act's language and legislative intent, meets the standards for exclusive federal jurisidiction set out in *Gulf Offshore Co. See Gulf Offshore Co.,* 453 U.S. at 478. Federal jurisdiction over Voting Rights Act issues is therefore exclusive.

III. *The Hathorn Decision Does Not Support State Court Adjudication of §2 Violations.*

Plaintiffs, defendants, and defendant-interveners seek to avoid the specific authority described above by citing *Hathorn v. Lovorn,* 457 U.S. 255 (1982). *Hathorn* clearly does not support a claim that state courts have original jurisdiction over Voting Rights Act issues. The Supreme Court in *Hathorn* explicitly limited state court consideration of § 5 issues to instances where the Voting Rights Act question arises as a collateral and not a primary issue. *Id.* at 266. As noted by the Court:

> [E]ven a finding of exclusive federal jurisdiction over claims arising under a federal statute usually will not prevent a state court from deciding a federal question collaterally.

Id. (quotation omitted). The Court nevertheless suggested that federal court jurisdiction over § 5 was in fact exclusive. *See Id.* at 267-68 and n.20.

The issue in *Hathorn* was solely whether a state court could determine the impact of § 5 perclearance requirements on state procedures. *Id.* at 257. The state court in that case was not attempting to adjudicate a claim under the Voting Rights Act, a fact of which the

Supreme Court made specific note. Instead, the state court was considering an issue only collaterally related to the Voting Rights Act. As the Court stated:

> Granting state courts the power to decide, *as a collateral matter,* whether § 5 applies to contemplated changes in election procedures will help insure compliance with the preclearance scheme. Approval of this *limited jurisdiction* also avoids placing state courts in the uncomfortable position of ordering voting changes that they suspect, but cannot determine, should be precleared under § 5.

Id. at 268-69 (emphasis added; footnote omitted).

Hathorn does not give state courts original jurisdiction over Voting Rights Act issues. Such jurisdiction is likewise not provided for in the Act itself, nor is it in accordance with congressional intent or the desire to further key federal interests that may be interfered with by local action.

CONCLUSION

In light of both the express language and the congressional intent of the Voting Rights Act, jurisdiction over claims arising under the Act must be exclusively federal.

Dated: October 7, 1991

POPHAM, HAIK, SCHNOBRICH & KAUFMAN, LTD.

By: /s/

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ATTORNEYS FOR PLAINTIFF-INTERVENERS

STATE OF MINNESOTA SPECIAL REDISTRICTING PANEL C8-91-985

Patricia Cotlow, Phillip Krass, Sharon LaComb, James Stein and Theodore Suss, individually and on behalf of all Citizens of Minnesota similarly situated, *Plaintiffs,* and John Walker, Howard Miller, Don Sudor and Nkajlo Vangh, *Plaintiff-Intervenors,* vs. Joan Growe, Secretary of State of Minnesota; and Patrick H. O' Connor,Hennepin County Auditor, individually and on behalf of all Minnesota county chief election officers, *Defendants,* and The Seventy-seventh Minnesota State House of Representatives and the Seventy-seventh Minnesota State Senate, *Defendant-Intervenors.*	MEMORANDUM OF LAW OF PLAINTIFF-INTERVENORS IN SUPPORT OF MOTION TO DISMISS OR IN THE ALTERNATIVE, FOR SUMMARY JUDGMENT REGARDING CONGRESSIONAL PLANS

INTRODUCTION

This panel of all the parties are fully aware of the issuance of an Order and Plans of Redistricting from the three judge panel in the United States District Court matter *Emison, et al. v. Growe, et al.*, Civ. 4-91-202 (D. Minn., Feb. 19, 1992) (hereinafter the "Federal Panel"). The parties to the federal action include all parties to this

state action against whom that judgment is to be enforced. The Federal Panel has, after thorough review and hearing issued its plans for the redistricting of congressional districts in the State of Minnesota. The Federal Panel's congressional plan constitutes a valid and enforceable judgment by a court of competent jurisdiction, and the Plaintiffs, Defendants, and Defendant-Intervenors to this action are thereby now precluded from seeking, and this Panel is precluded from issuing, a different plan for congressional redistricting.

Plaintiff-Intervenors pray that this Panel either (1) dismiss all claims and further action with respect to congressional redistricting, and/or (2) enter an order of summary judgment determining that the Federal Panel's congressional plan constitutes a valid and final order of congressional redistricting by a competent court, to the effect that the State Panel is now precluded from further proceedings or alternative judgments regarding congressional redistricting.

DISCUSSION

1. *THE FEDERAL PANEL'S ISSUANCE OF A CONGRESSIONAL REDISTRICTING PLAN CONSTITUTES ISSUE PRECLUSION AS TO CONGRESSIONAL REDISTRICTING BY THIS PANEL.*

Minnesota courts have long held that issue preclusion, or *collateral estoppel,* operates to prevent relitigation of matters where (1) the issue before a court is identical to one in a prior adjudication; (2) there was a final judgment on the merits; (3) that the party to be estopped was a party in the prior case; and (4) the party to be estopped was given full and fair opportunity to be heard on the issue. *See Matter of Welfare of M.D.O.,* 462 N.W.2d 370 (Minn. 1990); *American Hoist & Derrick Co. v. Employers' of Wausau,* 454 N.W.2d 462, *reh'q denied* (Minn. App. 1990). through Myers v. Price, 463 N.W.2d 773, *reh'q. denied* App. 1990); *H.J. Inc. v. Northwestern Bell Telephone Co.,*

734 F. Supp. 879 (D. Minn. 1990). The facts underlying the Panel's prior adjudication of and issuance of a plan of congresional redistricting meets all four requirements of preclusion. Thus, this Panel is barred under the doctrine of *collateral estoppel* from further adjudication or relitigation of any claims relating to plans of congressional redistricting.

The process by which the Federal Panel's congressional plan was considered and issued is determinative for collateral estoppel purposes. First, the Plaintiffs, Defendants, and Defendant-Intervenors were all parties before the Federal Panel when it issued its Order and Plans. Indeed, the legislature, plaintiffs Patricia Cotlow, et al., and the Hennepin County Attorney all *voluntarily* chose to intervene and fully participate in the hearings before the Federal Panel.

Second, the Federal Panel addressed the exact issue of congressional redistricting that the non-moving parties are asking this Panel now to consider. In doing so, the Federal Panel had before it pleadings that sought, *inter-alia,* the same relief sought by plaintiffs in this action.

Third, in adjudicating that matter, the Federal Panel issued its Order after submission of plans and memoranda from all affected parties before this State Panel. Moreover, the Federal Panel had before it precisely the *same* proposed congressional plans that have been recently submitted to this Panel.

Finally, the Federal Panel's plan of congressional redistricting was issued as a final judgment on February 19, 1992. *See* Order and Plans of Redistricting, Civ. 4-91-202 (D. Minn., February 19, 1992). That judgment is a valid judgment by a court of competent jurisdiction, and is to be accorded full faith and credit by this Panel. *See Embry v. Palmer,* 107 U.S. 3, 9-10 (1982); *See also* 18 C. Wright, A. Miller & E. Cooper, *Federal Practice & Procedure* § 4468.

II. *THE PANEL HAS THE AUTHORITY TO GRANT THE MOTION OF PLAINTIFF-INTERVENORS.*

The Rules of Civil Procedure specifically provide for the relief requested. Under Rule 41.01(b), Minn. R. Civ. P., this Panel may dismiss at Plaintiff-Intervenors' request "upon terms and conditions as the court deems proper." Upon Rule 41.02 Minn. R. Civ. P., the Panel has authority upon its own initiative, or upon motion of any party, to dismiss all or part of an action.

Alternatively, under Rule 56, Minn. R. Civ. P., a party may move for summary judgment as to all or any part of a claim, including those for declaratory judgment, if, upon the record, "there is no genuine issue as to any material fact and that either party is entitled to a judgment as a matter of law." *Id.*

CONCLUSION

The Federal Panel's judgment is entitled to respect as a valid judgment regarding congressional districts, and this Panel must refrain from acting in disregard of and/or contrary to that judgment.

Plaintiff-Intervenors respectfully request that judgment be granted accordingly.

Dated: March 2, 1992

POPHAM, HAIK, SCHNOBRICH & KAUFMAN, LTD.

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S.F. NO. 1596

SENATE
STATE OF MINNESOTA
SEVENTY-SEVENTH LEGISLATURE

Introduced by Pogemiller.
Read First Time Jan. 6, 1992, and Referred to the
Committee on Redistricting.
Committe Recommendation. To Pass as Amended.
Committee Report Adopted Jan. 7, 1992.
Read Second Time Jan. 7, 1992.

A bill for an act

relating to technical and other corrections to the legislative redistricting plan; amending Laws 1991, chapter 246.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Laws 1991, chapter 246, is amended to read:

Section 1. Minnesota Statutes 1990, section 2.031 subdivision 2, is amended to read:

Subd. 2. [DEFINITION.] The terms "county," "town," "township," "city," "ward," "precinct," "census tract," "block," and "unorganized territory" when used in a description of a legislative district in ~~Laws 1991, chapter~~

~~246,~~ *sections 2 to 68* mean a geographical area established as such by law and as it existed for purposes of the 1990 federal census.

Sec. 2. 2.043 [FIRST DISTRICT.]

Subdivision 1. [SENATE DISTRICT.] Senate district 1 consists of all of Kittson, Lake of the Woods, Marshall, Pennington, Red Lake, and Roseau Counties, and that portion of Polk County consisting of Angus Township, Belgium Township, Brandt Township, Brislet Township, the city of East Grand Forks, Esther Township, Euclid Township, Farley Township, Grand Forks Township, Helgeland Township, Higdem Township, Huntsville Township, Keystone Township, Northland Township, Rhinehart Township, Sandsville Township, Sullivan Township, and Tabor Township.

Subd. 2. [HOUSE DISTRICTS.] Senate district 1 is divided into two house districts as follows:

(a) House district 1A consists of that portion of senate district 1 not included in house district 1B.

(b) House district 1B consists of all of Pennington and Red Lake Counties, that portion of Polk County contained in senate district 1, and that portion of Marshall County consisting of the city of Alvarado, Boxville Township, Comstock Township, McCrea Township, Oak Park Township, the city of Oslo, Vega Township, the city of Viking, Viking Township, the city of Warren, and Warrenton Township.

Sec. 3. 2.053 [SECOND DISTRICT.]

Subdivision 1. [SENATE DISTRICT.] Senate district 2 consists of all of Clearwater, Mahnomen, and Norman Counties, that portion of Becker County not included in senate district 9 or 11, that portion of Beltrami County consisting of Alaska Township, Battle Township, Benville Township, the city of Blackduck, Buzzle Township, Cormant Township, Durand Township, the city of Funkley, Hagali Township, Hamre Township, Hines Township, Hornet Township, the city of Kelliher, Kelliher Township, Langor Township, Lee Township, Liberty Township, the unorganized territory of Lower Red Lake,

Maple Ridge Township, Minnie Township, Nebish Township, the unorganized territory of North Beltrami, O'Brien Township, Quiring Township, Roosevelt Township, Shooks Township, Shotley Township, the unorganized territory of Shotley Brook, Spruce Grove Township, Steenerson Township, Summit Township, the unorganized territory of Upper Red Lake, Waskish Township, and Woodrow Township, that portion of Clay County consisting of the city of Felton, Felton Township, Flowing Township, the city of Georgetown, Georgetown Township, Goose Prairie Township, Hagen Township, Keene Township, Kragnes Township, Morken Township, the city of Ulen, Ulen Township, and Viding Township, and that portion of Polk County not included in senate district 1.

Subd. 2. [HOUSE DISTRICTS.] Senate district 2 is divided into two house districts as follows:

(a) House district 2A consists of all of Norman County that portion of Becker County consisting of Atlanta Township, Cuba Township, Hamden Township, Riceville Township, Spring Creek Township, and Walworth Township, that portion of Clay County in senate district 2, that portion of Mahnomen County consisting of the city of Bejou, Bejou Township, Chief Township, Gregory Township, the city of Mahnomen, Marsh Creek Township, Pembina Township, Popple Grove Township, Rosedale Township, and the city of Waubun, and that portion of Polk County consisting of Andover Township, Badger Township, the city of Beltrami, Bygland Township, the city of Climax, the city of Crookston, Crookston Township, the city of Erskine, Fairfax Township, Fanny Township, the city of Fertile, the city of Fisher, Fisher Township, Garden Township, Garfield Township, Gentilly Township, Godfrey Township, Grove Park Township, Hammond Township, Hubbard Township, Kertsonville Township, King Township, Knute Township, Liberty Township, Lowell Township, the city of McIntosh, the city of Mentor, Nesbit Township, the city of Nielsville, Onstad Township, Parnell Township, Reis Township, Roome Township,

Russia Township, Scandia Township, Sletten Township, Tilden Township, Tynsid Township, Vineland Township, the city of Winger, Winger Township, and Woodside Township.

(b) House district 2B consists of that portion of senate district 2 not included in house district 2A.

Sec. 4. 2.063 [THIRD DISTRICT.]

Subdivision 1. [SENATE DISTRICT.] Senate district 3 consists of all of Itasca County except the unorganized territory of Bowstring Lake, that portion of Aitkin County consisting of the city of Aitkin, Aitkin Township, Ball Bluff Township, Balsam Township, Cornish Township, Fleming Township, the city of Hill City, Hill Lake Township, Jevne Township, Libby Township, Logan Township, Macville Township, Morrison Township, the organized territory of Northeast Aitkin, the unorganized territory of Northwest Aitkin, the city of Palisade, Spencer Township, Turner Township, Verdon Township, Waukenabo Township, and Workman Township, that portion of Koochiching County not included in senate district 6, and that portion of St. Louis County consisting of Alango Township, Fine Lakes Township, the city of Floodwood, Floodwood Township, French Township, Halden Township, Linden Grove Township, the unorganized territory of McCormack Lake *(59-21)*, Morcom Township, Prairie Lake Township, *that portion of the* unorganized *territory of Northwest St. Louis consisting of* precinct ~~numbers~~ 62-21 ~~and 59-21,~~ *that portion of the unorganized territory of Sand Lake consisting of the precinct of* West Sand Lake ~~Precinct~~ *(60-20)*, and Sturgeon Township.

Subd. 2. [HOUSE DISTRICTS.] Senate district 3 is divided into two house districts as follows:

(a) House district 3A consists of that portion of senate district 3 not included in house district 3B.

(b) House district 3B consists of that portion of Aitkin County included in senate district 3, that portion of Itaska County consisting of Blackberry Township, the city of Bovey, the city of Coleraine, Feeley Township, Goodland

Township, Grand Rapids Township, Greenway Township, Harris Township, Iron Range Township, the city of Keewatin, the unorganized territory of Little Sand Lake, Lone Pine Township, Nashwauk Township, Sago Township, Splithand Township, Trout Lake Township, the city of Warba, Wawina Township, and Wildwood Township, and that portion of St. Louis County consisting of Fine Lakes Township, the city of Floodwood, Floodwood Township, Halden Township, and Prairie Lake Township.

Sec. 5. 2.073 [FOURTH DISTRICT.]

Subdivision 1. [SENATE DISTRICT.] Senate district 4 consists of all of Hubbard County, that portion of Beltrami County not included in senate district 2, that portion of Cass County not included in senate district 12, that portion of Itaska County ~~not included in senate district~~ 3 *consisting of the unorganized territory of Bowstring Lake,* and that portion of Wadena County not included in senate district 11.

Subd. 2. [HOUSE DISTRICTS.] Senate district 3 is divided into two house districts as follows:

(a) House District 3A consists of that portion of senate district 3 not included in house district 3B

(b) House district 3B consists of that portion of Aitkin County included in senate district 3, that portion of Itasca County consisting of Blackberry Township, the city of Bovey, the city of Coleraine, Feeley Township, Goodland Township, Grand Rapids Township, Greenway Township, Harris Township, Iron Range Township, the city of Keewatin, the unorganized territory of Little Sand Lake, Lone Pine Township, Nashwauk Township, Sago Township, Splithand Township, Trout Lake Township, the city of Warba, Wawina Township, and Wildwood Township, and that portion of St. Louis County consisting of Fine Lakes Township, the city of Floodwood, Floodwood Township, Halden Township, and Prairie Lake Township.

Sec. 5. 2.073 [FOURTH DISTRICT.]

Subdivision 1. [SENATE DISTRICT.] Senate district 4 consists of all of Hubbard County, that portion of Beltrami County not included in senate district 2, that portion of

Cass County not included in senate district 12, that portion of Itaska County ~~not included in senate district~~ 3 *consisting of the unorganized territory of Bowstring Lake,* and that portion of Wadena County not included in senate district 11.

Subd. 2. [HOUSE DISTRICTS.] Senate district 4 is divided into two house districts as follows:

(a) House district 4A consists of that portion of Beltrami County in senate district 4, and that portion of Hubbard County consisting of the city of Akeley, Akeley Township, Arago Township, Clay Township, Clover Township, Farden Township, Fern Township, Guthrie Township, Hart Lake Township, Helga Township, Hendrickson Township, Lake Alice Township, Lake Emma Township, Lake George Township, Lake Hattie Township, Lakeport Township, the city of Laporte, Mantrap Township, Rockwood Township, Schoolcraft Township, Steamboat River Township, Thorpe Township, and White Oak Township.

(b) House district 4B consists of that portion of senate district 4 not included in house district 4A.

Sec. 6. 2.083 [FIFTH DISTRICT.]

Subdivision 1. [SENATE DISTRICT.] Senate district 5 consists of that portion of St. Louis County consisting of Alborn Township, Angora Township, Arrowhead Township, Balkan Township, the city of Biwabik, Biwabik Township, the city of Brookston, the city of Buhl, Cedar Valley Township, Cherry Township, the city of Chisholm, Clinton Township, Colvin Township, Cotton Township, Culver Township, Ellsburg Township, Elmer Township, Embarrass Township, the city of Eveleth, Fayal Township, the city of Franklin, the city of Gilbert, Great Scott Township, the unorganized territory of Hay Lake, the unorganized territory of Heikkila Lake, the city of Hibbing, the city of Iron Junction, the unorganized territory of Janette Lake, Kelsey Township, Kugler Township, *that portion of the unorganized territory of Lake Vermilion consisting of Vermilion Lake Precinct (62-17),* Lavell Township, the city of Leonidas, McDavitt Township, the

city of McKinley, the city of Meadowlands, Meadowlands Township, the city of Mountain Iron, Ness Township, New Independence Township, Northland Township, Payne Township, Pike Township, the unorganized territory of Potshot Lake, *that portion of the unorganized territory of Sand Lake consisting of the precincts of East Sand Lake (59-18), 60-18 and 60-19,* Sandy Township, Stoney Brook Township, Toivola Township, Van Buren Township, Vermilion Lake Township, the city of Virginia, White Township, and Wuori Township.

Subd. 2. [HOUSE DISTRICTS.] Senate district 5 is divided into two house districts as follows:

(a) House district 5A consists of that portion of senate district 5 not included in house district 5B.

(b) House district 5B consists of that portion of St. Louis County consisting of Alborn Township, Arrowhead Township, Balkan Township, the city of Brookston, the city of Buhl, Cedar Valley Township, Cherry Township, the city of Chisholm, Clinton Township, Cotton Township, Culver Township, Ellsburg Township, Elmer Township, Great Scott Township, the city of Hibbing, the city of Iron Junction, the unorganized territory of Janette Lake, Kelsey Township, Lavell Township, McDavitt Township, the city of Meadowlands, Meadowlands Township, Ness Township, New Independence Township, Northland Township, Payne Township, the unorganized territory of Potshot Lake, Stoney Brook Township, Toivola Township, and Van Buren Township.

Sec. 7. 2.093 [SIXTH DISTRICT.]

Subdivision 1. [SENATE DISTRICT.] Senate district 6 consists of all Cook and Lake Counties, that portion of Koochiching County consisting of the unorganized territory of Nett Lake, and that portion of St. Louis County not included in senate district 3, 5, 7, or 8.

Subd. 2. [HOUSE DISTRICTS.] Senate district 6 is divided into two house districts as follows:

(a) House district 6A consists of that portion of senate district 6 not included in house district 6B.

(b) House district 6B consists of that portion of St. Louis

County consisting of Alden Township, ~~North Star Township, Normanna Township, Gnesen Township, Rice Lake Township, Lakewood Township, Duluth Township, Canosia Township, and Fredenburg~~ *Canosia Township, Duluth Township, Fredenburg Township, Gnesen Township, Lakewood Township, Normanna Township, North Star Township, and Rice Lake* Township, and that portion of the city of Duluth not included in senate district 7.

Sec. 8. 2.103 [SEVENTH DISTRICT.]

Subdivision 1. [SENATE DISTRICT.] Senate district 7 consists of that portion of St. Louis County consisting of that portion of the city of Duluth lying west and south of a line descibed as follows: commencing at the intersection of the northern boundary of the city of Duluth and Calvary Road, easterly along Calvary Road to Woodland Avenue, southerly along Woodland Avenue to ~~Buffalo~~ *St. Marie* Street, easterly along ~~Buffalo~~ *St. Marie* Street to Wallace Avenue, southerly along Wallace Avenue to 5th Street, ~~westerly~~ *southwesterly* along 5th Street to ~~21~~ st *Woodland Avenue, southerly along Woodland Avenue to 20th* Avenue *East*, ~~southerly~~ *southeasterly* along ~~21st~~ *20th* Avenue *East* to ~~4th~~ *3rd* Street, ~~westerly~~ *southwesterly* along ~~4th~~ *3rd* Street to 15th Avenue *East*, southeasterly along 15th Avenue *East* Avenue *East* to 1st Street, ~~westerly~~ *south-westerly* along 1st Street to 12th Avenue East, south-easterly along 12th Avenue East to London Road, north-easterly along London Road to 13th Avenue East, ~~southerly~~ *southeasterly* ~~along 13th Avenue East and its extension to Lake Superior~~.

Subd. 2. [HOUSE DISTRICTS.] Senate district 7 is divided into two house districts as follows:

(a) House district 7B consists of that portion of ~~senate district 7~~ *the city of Duluth* lying east of a line described as follows: commencing at the intersection of the northern boundary of the city of Duluth and Rice Lake Road, southerly and southeasterly along Rice Lake Road *and Arrowhead Road* to Mesaba Avenue, southerly along Mesaba Avenue southerly along Mesaba Avenue to 13th

Street, ~~easterly~~ *northeasterly* along 13th Street to 6th Avenue East, ~~southerly~~ *southeasterly* along 6th Avenue East *to 10th Street, southwesterly along 10th Street to* State Highway 194 southwesterly along State Highway 194 to Mesaba Avenue, southerly along Mesaba Avenue to Lake Avenue, ~~northerly~~ *northwesterly* along Lake Avenue to 9th Street, southwesterly along 9th Street to 1st Avenue West, northwesterly along 1st Avenue West ~~and its extension to the extension of Rudolph Avenue, westerly along Rudolph Avenue and its extension to Blackman Avenue, southerly along Blackman Avenue and Orange Avenue~~ *to Clark House Creek, northwesterly along Clark House Creek to 13th Street, southwesterly along 13th Street to 5th Avenue West, southerly along 5th Avenue West* to 9th Street, southwesterly along 9th Street to *the intersection of 11th Avenue West and* Observation Road, northerly and westerly along Observation Road to Arlington Avenue, southerly along Arlington Avenue to U.S. Highway 53, southerly along U.S. Highway 53 southerly along U.S. Highway 53 to 14th Street, southwesterly along 14th Street to Miller Creek, southerly along Miller Creek to ~~6th~~ *an extension of 7th*Street, northeasterly along ~~6th~~ *the extension and 7th* Street to 22nd Avenue West, southeasterly along 22nd Avenue West to ~~Superior~~ *Michigan* Street, northeasterly along ~~Superior~~ *Michigan* Street to 21st Avenue West, southeasterly along 21st avenue West and its extension to St. Louis Bay.

(b) House district 7A consists of that portion of senate district 7 not included in house district 7B.

Sec. 9. 2.113 [EIGHTH DISTRICT.]

Subdivision 1. [SENATE DISTRICT.] Senate district 8 consists of all of Carlton County, that portion of St. Louis County consisting of Brevator Township, the city of Hermantown, Industrial Township, Midway Township, the city of Proctor, and Solway Township, that portion of Aitkin County not included in senate district 3, and that portion of Pine County not included in senate district 18.

Subd. 2. [HOUSE DISTRICTS.] Senate district 8 is

divided into two house districts as follows:

(a) House district 8A consists of that portion of St. Louis County included in senate district 8, and that portion of Carlton County consisting of the city of Carlton, the city of Cloquet, the city of Scanlon, the city of Thomson, Thomson Township, and Twin Lakes Township.

(b) House district 8B consists of that portion of senate district 8 not included in house district 8A.

Sec. 10. 2.123 [NINTH DISTRICT.]

Subdivision 1. [SENATE DISTRICT.] Senate district 9 consists of all of Wilkin County, that portion of Becker County consisting of the city of Audubon, Audubon Township, Cormorant Township, Lake Eunice Township, the city of Lake Park, and Lake Park Township, that portion of Clay County not included in senate district 2, and that portion of Otter Tail County consisting of Carlisle Township, Dunn Township, the city of Elizabeth, Elizabeth Township, the city of Erhard, Erhards Grove Township, Lida Township, Maplewood Township, Norwegian Grove Township, Orwell Township, Oscar Township, Pelican Township, the city of Pelican Rapids, the city of Rothsay, Scambler Township, Trondhjem Township, and Western Township.

Subd. 2. [HOUSE DISTRICTS.] Senate district 9 is divided into two house districts as follows:

(a) House district 9A consists of that portion of Clay County consisting of the city of Moorhead, *Moorhead Township, and those portions of Oakport Township, surrounded by the city of Moorhead.*

(b) House district 9B consists of that portion of senate district 9 not included in house district 9A.

Sec. 11. 2.133 [TENTH DISTRICT.]

Subdivision 1. [SENATE DISTRICT.] Senate district 10 consists of that portion of Douglas County not included in senate district 11 or 13, that portion of Otter Tail County not included in senate district 9 or 11, that portion of Pope County consisting of the city of Glenwood, Glenwood Township, Grove Lake Township, Leven Township, the city of Long Beach, Minnewaska Township, Reno

Township, the city of Villard, the city of Westport, and Westport Township, and that portion of Stearns County consisting of Ashley Township, Getty Township, Raymond Township, the city of Sauk Centre, and Sauk Centre Township.

Subd. 2. [HOUSE DISTRICTS.] Senate district 10 is divided into two house districts as follows:

(a) House district 10A consists of that portion of Douglas County consisting of the city of Evansville, Evansville Township, Leaf Valley Township, Lund Township, the city of Millerville, Millerville Township, the city of Miltona, Miltona Township, and that portion of Otter Tail County included in senate district 10.

(b) House district 10B consists of that portion of senate district 10 not included in house district 10A

Sec. 12. 2.143 [ELEVENTH DISTRICT.]

Subdivision 1. [SENATE DISTRICT.] Senate district 11 consists of all of Todd County, that portion of Becker County consisting of Burlington Township, Detroit Township, the city of Detroit Lakes, Erie Township, the city of Frazee, and Lake View Township, that portion of Douglas County consisting of Belle River Township, the city of Osakis, Osakis Township, and Spruce Hill Township, that portion of Otter Tail County consisting of Blowers Township, the city of Bluffton, Bluffton Township, Bulter Township, Candor Township, Compton Township, Corliss Township, the city of Deer Creek, Deer Creek Township, the city of Dent, Dora Township, Eastern Township, Edna Township, Gorman Township, Hobart Township, Homestead Township, Newton Township, the city of New York Mills, Oak Valley Township, Otto Township, Paddock Township, the city of Perham, Perham Township, Pine Lake Township, the city of Vergas, the city of Wadena, and Woodside Township, that portion of Stearns Count consisting of *the portion of* Melrose Township, *not surrounded by the city of Melrose*, Millwood Township, and the city of St. Rosa, and that portion of Wadena County consisting of the city of Aldrich, Aldrich Township, Bullard Township, Leaf River Township, Red Eye

Township, Rockwood Township, the city of Sebeka, the city of Staples, Thomastown Township, the city of Verndale, the city of Wadena, Wadena Township, and Wing River Township.

Subd. 2. [HOUSE DISTRICTS.] Senate district 11 is divided into two house districts as follows:

(a) House district 11A consists of that portion of Becker County included in senate district 11, that portion of Otter Tail County included in senate district 11, excluding Eastern Township, Oak Valley Township, and Woodside Township, and that portion of Wadena County consisting of Leaf River Township, Red Eye Township, Rockwood Township, the city of Sebeka, and the city of Wadena.

(b) House district 11B consists of that portion of senate district 11 not included in house district 11A.

Sec. 13. 2.153 [TWELFTH DISTRICT.]

Subdivision 1. [SENATE DISTRICT.] Senate district 12 consits of all of Crow Wing County, that portion of Cass County consisting of the cities of Motley and Pillager, and that portion of Morrison County not included in senate district 14 or 17.

Subd. 2. [HOUSE DISTRICT.] Senate district 12 is divided into two house districts as follows:

(a) House district 12A consists of that portion of Crow Wing County consisting of the city of Brainerd, the city of Breezy Point, Center Township, the city of Crosby, the city of Crosslake, the city of Cuyuna, Dean Lake Township, the city of Emily, Fairfield Township, the city of Fifty Lakes, Gail Lake Township, Ideal Township, Irondale Township, the city of Ironton, the city of Jenkins, Jenkins Township, Lake Edwards Township, Little Pine Township, the city of Manhattan Beach, Mission Township, the city of Nisswa, Oak Lawn Township, Pelican Township, the city of Pequot Lakes, Perry Lake Township, Rabbit Lake Township, Ross Lake Township, Sibley Township, Timothy Township, the city of Trommald, the unorganzied territory of West Crow Wing, and Wolford Township.

(b) House district 12B consists of that portion of senate district 12 not included in house district 12A

Sec. 14. 2.163 [THIRTEENTH DISTRICT.]

Subdivision 1. [SENATE DISTRICT.] Senate district 13 consists of all of Big Stone, Grant, Lac qui Parle, Stevens, Swift, and Traverse Counties, that portion of Douglas County consisting of Holmes City Township, the city of Kensington, Solem Township, and Urness Township, and that portion of of Pope County not included in senate district 10 or 14,

Subd. 2. [HOUSE DISTRICTS.] Senate district 13 is divided into two house districts as follows:

(a) House district 13A consists of all of Grant, Stevens, and Traverse Counties, that portion of Big Stone County consisting of the city of Barry, Browns Valley Township, the city of Graceville, Graceville Township, Malta Township, Moonshine Township, and Toqua Township, that portion of Douglas County contained in senate district 13, that portin of Pope County contained in sentate district 13, and that portion of Swift County consisting of the city of Appleton, Appleton Township, the cityof Danvers, Edison Township, Fairfield Township, Hegbert Township, the city of Holloway, Marysland Township, Moyer Township, Shible Township, Tara Township, and West Bank Township.

(b) House district 13B consists of that portion of senate district 13 not included in house district 13A.

Sec. 15. 2.173 [FOURTEENTH DISTRICT.]

Subdivision 1. [SENATE DISTRICT.] Senate district 14 consists of that portion of Benton County consisting of the cities of Rice and Sartell, that portion of Morrison County consisting of Bellevue Township, the city of Bowlus, the city of Elmdale, Elmdale Township, the city of Royalton, Swan River Township, Two Rivers Township, and the city of Upsala, that portion of Pope County consisting of Bangor Township, the city of Brooten, Lake Johanna Township, and the city of Sedan, and that portion of Stearns County not included in senate district 10, 11 ~~or~~ 16, *or 20*.

Subd. 2. [HOUSE DISTRICTS.] Senate district 14 is divided into two house districts as follows:

(a) House district 14A consists of that portion of senate district 14 not included in house district 14B.

(b) House district 14B consists of that portion of Pope County contained in senate district 14, and that portion of Stearns County consisting of the city of Belgrade, the city of Brooten, the city of Cold Spring, Collegeville Township, Crow Lake Township, Crow River Township, Eden Lake Township, the city of Elrosa, Fair Haven Township, Farming Township, the city of Freeport, the city of Greenwald, Grove Township, the city of Kimball Prairie, Lake George Township, the city of Lake Henry, Lake Henry Township, Luxenburg Township, Lynden Township, Maine Prairie Township, the city of Meire Grove, the city of Melrose, *the portion of Melrose Township surrounded by the city of Melrose,* Munson Township, the city of Munich, North Fork Township, Oak Township, the city of Paynesville, Paynesville Township, the city of the city of Rockville, Rockville Township, the city of Roscoe, Richmond, the city of St. Martin, St. Martin Township, the city of Spring Hill, Spring Hill Township, Wakefield Township, and Zion Township.

Sec. 16. 2.183 [FIFTEENTH DISTRICT.]

Subdivision 1. [SENATE DISTRICT.] Senate district 15 consists of all of Kandiyohi and Renville Counties, that portion of Chippewa County consisting of the city of Granite Falls, and Granite Falls Township, that portion of McLead County consisting of Collins Township, Lynn Township, and the city of Stewart, that portion of Meeker County consisting of Acton Township, the city of Cedar Mills, Cedar Mills Township, the city of Cosmos, Cosmos Township, Danielson Township, Greenleaf Township, and the city of Grove City, and that portion of Yellow Medicine County consisting of the city of Granite Falls.

Subd. 2. [HOUSE DISTRICTS.] Senate district 15 is divided into two house districts as follows:

(a) House district 15A consists of that portion of Kandiyohi County consisting of Arctander Township, Burbank Township, Colfax Township, Dovre Township, Green Lake Township, Harrison Township, Irving

Township, the city of Kandiyohi, Kandiyohi Township, Lake Andrew Township, Mamre Township, the city of New London, New London Township, Norway Lake Township, the city of Pennock, the city of Regal, Roseville Township, St. Johnson Township, the city of Spicer, the city of Sunburg, the city of Willmar, and Willmar Township.

(b) House district 15B consists of that portion of senate district 15 not included in house district 15A.

Sec. 17. 2.193 [SIXTEENTH DISTRICT.]

Subdivsion 1. [SENATE DISTRICT.] Senate district 16 consists of that portion of Stearns County consisting of St. Augusta Township, the city of St. Cloud, St. Cloud Township, and the city of Waite Park, and that portion of Benton County consisting of the city of Sauk Rapids, except ~~that portion~~ *those portions* of the city of Sauk Rapids surrounded by Sauk Rapids Township, the portions of Sauk Rapids Township surrounded by the city of Sauk Rapids, and the city of St. Cloud, except that portion of the city of St. Cloud lying east of a line described as follows: commencing at the intersection of the eastern boundary of the city of St. Cloud and State Highway 23, southwesterly along State Highway 23 to 14th Avenue Southeast, southerly along 14th Avenue Southeast to ~~2nd Street Southeast~~ *County Road 47,* easterly along ~~2nd Street Southeast~~ *County Road 47,* to the eastern boundary of the city of St. Cloud.

Subd. 2. [HOUSE DISTRICTS.] Senate district 16 is divided into two house districts as follows:

(a) House district 16A consists of that portion of Benton County in senate district 16, and that portion of Stearns County consisting of that portion of the city of St. Cloud lying east and north of a line dscribed as follows: commencing at the intersection of the northern boundary of the city of St. Cloud and the extension of 25th Avenue North, southerly along the extension of 25th Avenue North to the Sauk River, southerly and westerly along the Sauk River to *an extension of* 33rd Avenue North, southerly along *the extension of 33rd Avenue North and*

33rd Avenue North to ~~5th Street North, easterly along~~ 5th ~~Street North to 30th Avenue North, southerly along~~ 30th ~~Avenue North and 30th Avenue South to 1st Street South, easterly along 1st Street South to 25th Avenue South, northerly along 25th Avenue South and 25th Avenue North to~~ 2nd Street North, easterly along 2nd Street North to Cooper Avenue North, southerly along Cooper Avenue North to West St. Germain Street, northeasterly along West St. Germain Street to 8th Avenue South, southeasterly along 8th Avenue South to 1st Street South, southwesterly along 1st Street South to 8th Avenue South, southeasterly along 8th Avenue South to 2nd Street South, southwesterly along 2nd Street South to 10th Avenue South, southeasterly along 10th Avenue South to ~~an extension of~~ 2nd Street South, southwesterly along *an extension of* 2nd Street South to East Lake Boulevard ~~South,~~ southerly along East Lake Boulevard ~~South~~ to 5th Street South, easterly along 5th Street South to 4th Avenue South, southerly along 4th Avenue South to 10th Street South, easterly along 10th Street south to the Mississppi River.

(b) House district 16B consists of that portion of senate district 16 not included in house district 16A.

Sec. 18. 2.203 [SEVENTEENTH DISTRICT.]

Subdivision 1. [SENATE DISTRICT.] Senate district 17 consists of Mille Lacs County, that portion of Benton County not included in senate district 14 or 16, that portion of Kanabec County not included in senate district 18, that portion of Sherburne County not included in senate district 19, and that portion of Morrison County consisting of: the city of Buckman, Buckman Township, the city of Genola, Granite Township, the city of Harding, the city of Hillman, Hillman Township, Lakin Township, the city of Lastrup, Leigh Township, Morrill Township, Mount Morris Township, Pierz Township, Pulaski Township, and Richardson Township.

Subd. 2. [HOUSE DISTRICTS.] Senate district 17 is divided into two house districts as follows:

(a) House district 17A consists of that portion of senate

district 17 not included in house district 17B.

(b) House district 17B consists of those portions of Benton and Sherburne Counties located in senate district 17.

Sec. 19. 2.213 [EIGHTEENTH DISTRICT.]

Subdivision 1. [SENATE DISTRICT.] Senate district 18 consists of all of Chisago County, all of Isanti County, that portion of Kanabec County consisting of ~~the city of Braham,~~ Brunswick Township, Grass Lake Township, the city of Grasston, and South Fork Township, and that portion of Pine County consisting of the city of Pine City, Pine City Township, the city of Rock Creek, and Royalton Township.

Subd. 2. [HOUSE DISTRICTS.] Senate district 18 is divided into two house districts as follows:

(a) House district 18A consists of all of Isanti County, that portion of Chisago County consisting of Lent Township and the city of Stacy, that portion of Kanabec County contained in senate district 18, and that portion of the Pine County consisting of Royalton Township.

(b) House district 18B consists of that portion of senate districtt 18 not included in house district 18A.

Sec. 20. 2.223 [NINETEENTH DISTRICT.]

Subdivision 1. [SENATE DISTRICT.] Senate district 19 consists of that portion of Sherburne County consisting of the city of Becker, Becker Township, the city of Big Lake, Big Lake Township, the city of Clear Lake, Clear Lake Township, and the city of Elk River, and that portion of Wright County consisting of the city of Albertville, the city of Annandale, the city of Buffalo, Buffalo Township, Chatham Township, the city of Clearwater, Clearwater Township, Corinna Township, Frankfort Township, the city of Maple Lake, Maple Lake Township, the city of Monticello, Monticello Township, Otsego Township, the city of St. Michael, and Silver Creek Township.

Subd. 2. [HOUSE DISTRICTS.] Senate district 19 is divided into two house districts as follows:

(a) House district 19A consists of that portion of senate district 19 not included in house district 19B.

(b) House district 19B consists of that portion of Sherburne County consisting of the city of Elk River, and that portion of Wright County consisting of the city of Albertville, the city of Buffalo, Buffalo Township, ~~Chatham Township,~~ Frankfort Township, Otsego Township, and the city of St. Michael.

Sec. 21. 2.233 [TWENTIETH DISTRICT.]

Subdivision 1. [SENATE DISTRICT.] Senate district 20 consists of that portion of Carver County consisting of the city of Hamburg, Hollywood Township, the city of Norwood, the city of Watertown, Watertown Township, the city of Young America, and Young America Township, that portion of McLeod County not included in senate district 15 or 23, that portion of Meeker County not included in senate district 15, that portion of Stearns County consisting of the city of Eden Valley, and that portion of Wright County not included in senate district 19, ~~33,~~ or 34.

Subd. 2. [HOUSE DISTRICTS.] Senate district 20 is divided into two house districts as follows:

(a) House district 20A consists of that portion of senate district 20 not included in house district 20B.

(b) House district 20B consists of that portion of Carver County included in senate district 20, that portion of McLeod County consisting of Bergen Township, Hale Township, Helen Township, the city of Lester Prairie, the city of Plato, Rich Valley Township, the city of Silver Lake, the city of Winsted, and Winsted Township, and that portion of Wright County consisting of Albion Township, the city of Cokato, Cokato Township, French Lake Township, the city of Howard Lake, Marysville Township, Middleville Township, the city of Montrose, the city of South Haven, Southside Township, Victor Township, the city of Waverly, and Woodland Township.

Sec. 22. 2.243 [TWENTY-FIRST DISTRICT.]

Subdivision 1. [SENATE DISTRICT.] Senate district 21 consists of all of Lincoln, Pipestone, and Rock Counties, all of Lyon County except that included in senate district 22, all of Yellow Medicine County excluding the city of

Granite Falls, that portion of Murray County consisting of Cameron Township, Chanarambie Township, the city of Chandler, Ellsborough Township, the city of Lake Wilson, and Moulton Township, that portion of Nobles County consisting of the city of Adrian, the city of Ellworth, Grand Prairie Township, Leota Township, the city of Lismore, Lismore Township, and Westside Township, and that portion of Redwood County consisting of Gales Township, Granite Rock Township, Johnsonville Township, the city of Lucan, the city of Milroy, the city of Seaforth, Sheridan Township, Underwood Township, Vail Township, the city of Vesta, Vesta Township, the city of Wabasso, Waterbury Township, and Westline Township.

Subd. 2. [HOUSE DISTRICTS.] Senate district 21 is divided into two house districts as follows:

(a) House district 21A consists of that portion of senate district 21 not included in house district 21B.

(b) House district 21B consists of all of Lincoln, Pipestone, and Rock Counties, that portion of Lyon County consisting of Coon Creek Township, the city of Florence, Island Lake Township, Nordland Township, and Shelburne Township, and those portions of Murray and Nobles Counties contained in senate district 21.

Sec. 23. 2.353 [TWENTY-SECOND DISTRICT.]

Subdivision 1. [SENATE DISTRICT.] Senate district 22 consists of all of Cottonwood and Jackson Counties, that portion of Brown County consisting of Albin Township, Bashaw Township, the city of Comfrey, Mulligan Township, and Stately Township, that portion of Lyon County consisting of the city of Balaton, Custer Township, the city of Garvin, Monroe Township, Rock Lake Township, and the city of Tracy, that portion of Martin County consisting of Cedar Township, the city of Ceylon, the city of Dunnell, Elm Creek Township, Fox Lake Township, Galena Township, Jay Township, Lake Belt Township, Lake Fremont Township, Manyaska Township, the city of Ormsby, the city of Sherburn, the city of Trimont, and the city of Welcome, that portion of Murray

County not included in senate district 21, that portion of Nobles County not included in senate district 21, that portion of Redwood County consisting of the city of Lamberton, Lamberton Township, North Hero Township, the city of Revere, Springdale Township, and the city of Walnut Grove, and that portion of Watonwan County consisting of Adrian Township, the city of Butterfield, Butterfield Township, the city of Darfur, Long Lake Township, Nelson Township, the city of Odin, Odin Township, the city of Ormsby, and St. James Township.

Subd. 2. [HOUSE DISTRICTS.] Senate district 22 is divided into two house districts as follows:

(a) House district 22A consists of that portion of Cottonwood County consisting of Ann Township, Rose Hill Township, Southbrook Township, the city of Westbrook, and Westbrook Township, that portion of Jackson County consisting of Alba Township, Ewington Township, and La Crosse Township, that portion of Lyon County included in senate district 22, that portion of Murray County included in senate district 22, that portion of Nobles County included in senate district 22, and that portion of Redwood County consisting of North Hero Township, the city of Revere, Springdale Township, and the city of Walnut Grove.

(b) House district 22B consists of that portion of senate district 22 not included in house district 22A

Sec. 24. 2.263 [TWENTY-THIRD DISTRICT.]

Subdivision 1. [SENATE DISTRICT.] Senate district 23 consists of that portion of Blue Earth County consisting of Butternut Valley Township, Cambria Township, and Judson Township, that portion of Brown County consisting of Burnstown Township, the city of Cobden, Cottonwood Township, Eden Township, the city of Evan, the city of Hanska, Home Township, Lake Hanska Township, Leavenworth Township, Linden Township, Milford Township, the city of New Ulm, North Star Township, Prairieville Township, Sigel Township, the city of Sleepy Eye, the city of Springfield, and Stark Township, that portion of McLeod County consisting of the city of

Brownton, the city of Glencoe, Clencoe Township, Penn Township, Round Grove Township, and Sumter Township, that portion of Nicollet County not included in senate district 24, that portion of Redwood County not included in senate district 21 or 22, and all of Sibley County except for Faxon Township.

Subd. 2. [HOUSE DISTRICTS.] Senate district 23 is divided into two house districts as follows:

(a) House district 23A consists of that portion of Brown County consisting of Burnstown Township, ~~the city of Cobden,~~ Eden Township, the city of Evan, Home Township, Milford Township, the city of New Ulm, North Star Township, Prairieville Township, the city of Sleepy eye, and the city of Springfield, and that portion of Redwood County included in senate district 23.

(b) House district 23B consists of that portion of senate district 23 not included in house district 23A.

Sec. 25. 2.273 [TWENTY-FOURTH DISTRICT.]

Subdivision 1. [SENATE DISTRICT.] Senate district 24 consists of that portion of Blue Earth County consisting of Lime Township, the city of Mankato, *the city of North Mankato,* Mankato Township, the city of Skyline, and South Bend Township, that portion of Le Sueur County consisting of the city of Cleveland, Cleveland Township, the city of Kasota, Kasota Township, the city of LeSueur, Ottawa Township, and Washington Township, that portion of Nicollet County consisting of Belgrade Township, the city of Mankato, the city of North Mankato, Oshawa Township, the city of St. Peter, and Traverse Township.

Subd. 2. [HOUSE DISTRICTS.] Senate district 24 is divided into two house districts as follows:

(a) House district 24A consists of that portion of Nicollet County consisting of the city of Mankato, and that portion of Blue Earth County consisting of *that portion of* the city of Mankato *south of U.S. Highway 14, less those portions of the city of Mankato surrounded by Mankato Township, plus those portions of Mankato Township surrounded by the city of Mankato.* the city of Skyline,

and South Bend Township.

(b) House district 24B consists of that portion of senate district 24 not included in house district 24A.

Sec. 26. 2.283 [TWENTY-FIFTH DISTRICT.]

Subdivision 1. [SENATE DISTRICT.] Senate district 25 consists of all of Rice County, that portion of Dakota County consisting of the city of Northfield, that portion of Scott County consisting of the city of New Prague, ~~and~~ that portion of Le Sueur County not included in senate district 24 of 35, *and that portion of Waseca County consisting of the city of Elysian.*

Subd. 2. [HOUSE DISTRICTS.] Senate district 25 is divided into two house districts as follows:

(a) House district 25A consists of those portions of Dakota and Scott Counties included in senate district 25, that portion of Le Sueur County consisting of the city of Heidelberg, Lanesburgh Township, the city of Le Center, Lexington Township, the city of Montgomery, Montgomery Township, and the city of New Prague, and that portion of Rice County consisting of Bridgewater Township, the city of Dundas, Forest Township, the city of Lonsdale, the city of Northfield, Webster Township, and Wheatland Township.

(b) House district 25B consists of that portion of senate district 25 not included in house district 25A.

Sec. 27. 2.293 [TWENTY-SIXTH DISTRICT.]

Subdivision 1. [SENATE DISTRICT.] Senate district 26 consists of all of Faribault County, that portion of Blue Earth County not included in senate district 23 or 24, that portion of Martin County not included in senate district 22, that portion of Waseca County not included in senate district ~~25 or~~ 28, and that portion of Watonwan County not included in senate district 22.

Subd. 2. [HOUSE DISTRICTS.] Senate district 26 is divided into two house districts as follows:

(a) House district 26A consists of that portion of senate district 26 not included in house district 26B.

(b) House district 26B consists of all of Faribault County, that portion of Blue Earth County consisting of

Beauford Township, Danville Township, Decoria Township, the city of Eagle Lake, the city of Good Thunder, Jamestown Township, Le Ray Township, Lyra Township, McPherson Township, the city of Madison Lake, the city of Mapleton, Mapleton Township, Medo Township, the city of Pemberton, the city of St. Clair, and Sterling Township, Byron Township, Freedom Township, the city of Janesville, Janesville Township, the city of New Richland, New Richland Township, Vivian Township, the city of Waldorf, and Wilton Township.

Sec. 28. 2.303 [TWENTY-SEVENTH DISTRICT.]

Subdivision 1. [SENATE DISTRICT.] Senate district 27 consists of all of Freeborn County, and that portion of Mower County not included in senate district 31.

Subd. 2. [HOUSE DISTRICTS.] Senate district 27 is divided into two house districts as follows:

(a) House district 27A consists of all of Freeborn County.

(b) House district 27B consists of that portion of senate district 27 not included in house district 27A.

Sec. 29. 2.313 [TWENTY-EIGHTH DISTRICT.]

Subdivision 1. [SENATE DISTRICT.] Senate district 28 consists of all of Steele County, all of Dodge County except Vernon Township, that portion of Goodhue County consisting of Cherry Grove Township, Holden Township, Kenyon Township, the city of Kenyon, Roscoe Township, Wanamingo Township, and the city of Wanamingo, that portion of Olmsted County consisting of the city of Byron and Kalmar Township, and that portion of Waseca County consisting of Blooming Grove Township, Iosco Township, Otisco Township, St. Mary Township, the city of Waseca, and Woodville Township.

Subd. 2. [HOUSE DISTRICTS.] Senate district 28 is divided into two house districts as follows:

(a) House district 28A consists of that portion of Steele County consisting of Clinton Falls Township, Deerfield Township, Meriden Township, Owatonna Township, and the city of Owatonna, and that portion of Waseca County consisting of Blooming Grove Township, Iosco Township, St. Mary Township, the city of Waseca, and Woodville

Township.

(b) House district 28B consists of that portion of senate district 28 not included in house district 28A.

Sec. 30. 2.323 [TWENTY-NINTH DISTRICT.]

Subdivision 1. [SENATE DISTRICT.] Senate District 29 consists of all of Wabasha County, that portion of Dakota County consisting of the city of Hastings, *the portion of Marshan Township surrounded by the city of Hastings*, and Ravenna Township, ~~and~~ that portion of Goodhue County not included in senate district 28 or 37, *and that portion of Washington County consisting of the city of Hastings*.

Subd. 2. [HOUSE DISTRICTS.] Senate district 29 is divided into two house districts as follows:

(a) House district 29A consists of that portion of Dakota County consisting of the city of Hastings, *the portion of Marshan Township surrounded by the city of Hastings*, and Ravenna Township, and that portion of Goodhue County consisting of the city of Red Wing, and Welch Township.

(b) House district 29B consists of that portion of senate district 29 not included in house district 29A.

Sec. 31. 2.333 [THIRTIETH DISTRICT.]

Subdivision 1. [SENATE DISTRICT.] Senate district 30 consists of that portion of Olmsted County consisting of the city of Rochester, *plus the portions of the townships of Cascade, Marion, and Rochester that are surrounded by the City of Rochester, less the portions of the city of Rochester and Rochester Township lying within a line described as follows: commencing at the interesection of U.S. Highway 52, Mayowood Road Southwest, and the southwestern boundary of the city of Rochester, northerly along U.S. Highway 52 to 16th Street Southwest, easterly along 16th Street Southwest and 16th Street Southeast to 9th Avenue Southeast, southerly along 9th Avenue Southeast to 17 1/2 Street Southeast, easterly along 17 1/2 Street Southeast to 10th Avenue Southeast, southerly along 10th Avenue Southeast to 19th Street Southeast,*

westerly along 19th Street Southeast, southerly along 9 1/2 Avenue Southeast to 20th Street Southeast, easterly along 20th Street Southeast to 11th Avenue Southeast, southerly along 11th Avenue Southeast to Pinwood Road Southeast, southeasterly along Pinwood Road Southeast to the eastern boundary of the city of Rochester, and southerly, westerly, and northerly along the boundary of the city of Rochester to the point of origin.

Subd. 2. [HOUSE DISTRICTS.] Senate district 30 is divided into two house districts as follows:

(a) House district 30A consists of that portion of senate district 30 lying north of a line described as follows: commencing at the intersection of ~~Country club Road West with the western boundary of the city of Rochester, easterly along Country Club Road West and 2nd Street Southwest to 6th Avenue Southwest, northerly along 6th Avenue Southwest and 6th Avenue Northwest to 7th Street Northwest, westerly along 7th Street Northwest to 7th Avenue Northwest, northerly along 7th Avenue Northwest to 11th Street Northwest, easterly along 11th Street Northwest to 5th Avenue Northwest, northerly along 5th Avenue Northwest to 14th Street Northwest, easterly along 14th Street Northwest to Cascade Creek, northeasterly along Cascade Creek to the Zumbro River, southeasterly and southerly along the zumbro River to 7ths Street Northeast, easterly along 7th Street Northeast to 11th Avenue Northeast, northerly along 11th Avenue Northeast to 14th Street Northwest, easterly along 14th Street Northwest~~ *Industrial Drive Northwest, 7th Street Northwest, and the western boundary of the city of Rochester, easterly along 7th Street Northwest and 7th Street Northeast to 14th Avenue Northeast, northerly along 14th Avenue Northeast to Viola Road Northeast,* and northeasterly along Viola Road Northeast to ~~19th Street Northeast, westerly along 19th Street Northeast to 13th Avenue Northeast, northerly along 13th Avenue Northeast~~ to the ~~northeastern~~ *eastern* boundary of the city of Rochester.

(b) House district 30B consists of that portion of senate district 30 not included in house district 30A.

Sec. 32 2.343 (THIRTY-FIRST DISTRICT.)

Subdivision 1. (SENATE DISTRICT.) Senate district 31 consists of that portion of Dodge County consisting of Vernon Township, that portion of Fillmore County not included in senate district 32, that portion of Mower County consisting of Bennington Township, Clayton Township, Frankford Township, the city of Grand Meadow, Grand Meadow Township, the city of Le Roy, Le Roy Township, Lodi Township, Pleasant Valley Township, the city of Racine, Racine Township, the city of Sargeant, Sargeant Township, and the city of Taopi, that poriton of Olmsted County not included in senate district 28 or 30, and that portion of Winona County consisting of the city of St. Charles, St. Charles Township, and Saratoga Township.

Subd. 2. (HOUSE DISTRICTS.) Senate district 31 is divided into two house districts as follows:

(a) House district 31A consists of that portion of senate district 31 not included in house district 31B.

(b) House district 31B consists of those portions of Fillmore, Mower, and Winona Counties in senate district 31, and that portion of Olmsted County consisting of the city of Chatfield, the city of Dover, Dover Township, Elmira Township, the city of Eyota, Eyota Township, Orion Township, Quincy Township, and Viola Township.

Sec. 33 2.353 (THIRTY-SECOND DISTRICT.)

Subdivision 1. (SENATE DISTRICT.) Senate district 32 consists of all of Houston County, that portion of Fillmore county consisting of Norway Township, the city of Peterson, the city of Rushford, and the city of Rushford Village, and that portion of Winona County not included in senate district 31.

Subd. 2. (HOUSE DISTRICTS.) Senate district 32 is divided into two house districts as follows:

(a) House district 32A consists of that portion of Winona county consisting of the city of Elba, Elba Township, the

city of Goodview, the city of Minneiska City, the city of Minnesota City, Mount Vernon Township, the city of Rollingstone, Rollingstone Township, Whitewater Township, the city of Winona, and Winona Township.

(b) House district 32B consists of that portion of senate district 32 not included in house district 32A.

Sec. 34. 2.363 (THIRTY-THIRD DISTRICT.)

Subdivision 1. (SENATE DISTRICT.) Senate district 33 consists of that portion of Hennepin County consisting of ~~Rogers,~~ *the cities of* Corcoran, ~~Hassan,~~ Dayton, ~~and~~ Maple Grove, *and Rogers, Hassan Township,* that portion of the city of Champlin not included in senate district 48, and that portion of the city of Plymouth lying east and north of the line described as follows: commencing at the intersection of the northern boundary of the city of Plymouth and Interstate Highway 494, southerly along Interstate Highway 494 to ~~Highway~~ *County Road* 47, easterly along ~~Highway~~ *County Road* 47 to Pineview Lane North, southerly along Pineveiew Lane North to the Soo Line railroad tracks, easterly along the Soo Line railroad tracks to Larch Lane North, southerly along Larch Lane North to Rockford Road, easterly along Rockford Road to Zachery Lane North, southerly along Zachary Lane North to 36th Avenue North, easterly along 36th Avenue North to the eastern boundary of the city of Plymouth; *and that portion of Wright County consisting of the city of Dayton.*

Subd. 2. (HOUSE DISTRICTS.) Senate district 33 is divided into two house districts as follows:

(a) House district 33A consists of that portion of senate district 33 not included in house district 33B.

(b) House district 33B consists of that portion of the city of Plymouth in senate district 33 and that portion of the city of Maple Grove lying south and east of a line described as follows: commencing at the intersection of the eastern boundary of the city of ~~Plymouth~~ *Maple Grove* with 101st Avenue North, westerly along 101st Avenue North to Zachary Lane, southerly along Zachary Lane to *the NSP power line south of* 97th Avenue North, easterly

westerly along 97th Avenue North *and its extension the NSP power line* to the extension of Xenium Lane, southerly along the extension of Xenium Lane and Xenium Lane to County Road 30, westerly along County Road 30 to Interstate Highway ~~494~~ *94*, ~~southerly~~ *southeasterly* along Interstate Highway ~~494~~ *94* to ~~85th~~ Avenue North *Weaver Lake Road*, westerly along ~~85th~~ Avenue North *Weaver Lake Road* to *the creek north of Fish Lake, southerly along the creek to* Fish Lake, southerly along the ~~western~~ *eastern* shore of Fish Lake to ~~Fernbrook~~ Lane *the boat launch at Fish Lake Regional Park*, southerly *from the boat launch* along *the hiking trail west of* Fernbrook Lane to Timbercrest Drive, easterly along Timber crest Drive to *Zinnia Maplewood Drive*, northerly along *Zinnia Maplewood Drive* to 73rd Avenue North, easterly along 73rd Avenue North *and its extension* to Interstate Highway 494, southerly along Interstate Highway 494 to the southern boundary of the city of Maple Grove.

Sec. 35. 2.373 (THIRTY-FOURTH DISTRICT.)

Subdivision 1. (SENATE DISTRICT.) Senate district 34 consists of that portion of Hennepin county ~~not included in any other senate district~~ *consisting of the cities of Greenfield, Hanover, Independence, Long Lake, Loretto, Maple Plain, Medina, Minnestrista, Mound, Rockford, St. Bonifacius, and Spring Park, that portion of the city of Orono not included in senate district 43, and that portion of the city of Plymouth not included in senate district 33 or 45*, and that portion of Wright County consisting of the city of Delano, Franklin Township, *the city of Hanover*, the city of Rockford, and Rockford Township.

Subd. 2. (HOUSE DISTRICTS.) Senate district 34 is divided into two house districts as follows:

(a) House district 34A consists of *the portion of Wright County included in senate district 34* and that portion of Hennepin County consisting of the city of Hanover, the city of Greenfield, the city of Independence, the city of Minnestrista, the city of Mound, *the city of Rockford*, the city of Spring Park, and the city of St. Bonifacius.

(b) House district 34B consists of that portion of senate

district 34 not included in house district 34A.

Sec. 36. 2.383 (THIRTY-FIFTH DISTRICT.)

Subdivision 1. (SENATE DISTRICT.) Senate district 35 consists of that poriton of Carver County not included in senate district 20 or 43, that poriton of Le Sueur County consisting of Derrynane Township, Sharon Township, and Tyrone Township, that portion of Scott County not included in senate district *25,* 37, or 41, and that portion of Sibley County consisting of Faxon Township.

Subd. 2. (HOUSE DISTRICTS.) Senate district 35 is divided into two house districts as follows:

(a) House district 35A consists of that portion of senate district 35 not included in house district 35B.

(b) House District 35B consists of that portion of Scott County consisting of Jackson Township, the city of Jordan, Louisville Township, the city of Prior Lake, Sandcreek Township, the city of Shakopee, and Spring Lake Township.

Sec. 37. 2.393 (THIRTY-SIXTH DISTRICT.)

Subdivision 1. (SENATE DISTRICT.) Senate district 36 consists of that portion of Dakota County consisting of that portion of the city of Burnsville lying south of a line described as follows: commencing at the intersection of the western boundary of Dakota County and County Road 42, easterly along County Road 42 to Burnsville Parkway, northeasterly along Burnsville Parkway to West 136th Street, easterly along West 136th Street to County Road 5, southerly along County Road 5 to West 138th Street, ~~southeasterly~~ *easterly* along West 138th Street to *James Avenue, southeasterly along James Avenue to West 140th Street,* ~~*southwesterly*~~ *southeasterly* along *West* 140th Street to McAndrews Road, easterly along McAndrews Road to Nicollet Avenue, northerly along Nicollet Avenue to State Highway 13, northeasterly along State Highway 13 to Cliff Road, easterly along Cliff Road to the eastern boundary of the city of Burnsville, that portion of the city of Apple Valley lying south of a line described as follows: commencing at the intersection of the northern boundary of the city of Apple Valley with

State Highway 77, southerly and then easterly along State Highway 77 *and County Road 38* to Johnny Cake Ridge Road, ~~northerly along Johnny Cake Ridge Road to the extension of Eveleth Path, easterly and northeasterly along Eveleth Path and its extension to 126th Street West, easterly and southeasterly along 126th Street West~~ and *Diamond Path, and southeasterly along* Diamond Path to the eastern boundary of the city of Apple Valley, and that portion of the city of Lakeville north and east of a line described as follows: commencing at the intersection of the northern boundary of the city of Lakeville and Flagstaff Avenue, southerly along Flagstaff Avenue to Dodd Boulevard, northeasterly along Dodd Boulevard to the northern boundary of the city of Lakeville.

Subd. 2. (HOUSE DISTRICTS.) Senate district 36 is divided into two house districts as follows:

(a) House district 36A consists of those portions of the ~~cities of Apple Valley and Lakeville~~ *city of Burnsville* contained in senate district 36.

(b) House district 36B consists of that portion of senate district 36 not included in house district 36A.

Sec. 38. 2.403 (THIRTY-SEVENTH DISTRICT.)

Subdivision 1. (SENATE DISTRICT.) Senate district 37 consists of that portion of Scott County consisting of Credit River Township, Cedar Lake Township, New Market Township, the city of New Market, and the city of Elko, that portion of Dakota county not included in senate district 25, 29, 36, 38, ~~or~~ 39, *or 41,* and that portion of Goodhue County consisting of Cannon Falls Township, Leon Township, Stanton Township, and Warsaw Township, and the cities of Cannon Falls and Dennison.

Subd. 2. (HOUSE DISTRICTS.) Senate district 37 is divided into two house districts as follows:

(a) House distict 37A consists of that portion of house district 37 not included in house district 37B.

(b) House district 37B consists of that portion of senate district 37 consisting of that portion of Scott County located in senate district 37 and that portion of Dakota

County consisting of that portion of the city of Lakeville included in senate district 37 and that portion of the city of Farmington lying north of a line described as follows: commencing at the intersection of the ~~northern boundary of the city of Farmington and the~~ eastern boundary of the city of Farmington, ~~southerly along the eastern boundary of the city of Farmington to the point where it turns east, westerly along an extension of that boundary of the city of Farmington~~ *and the north branch of the Vermillion River, southwesterly along the north branch of the Vermillion River* to Akin Road, northwesterly along Akin Road to 195th Street West, westerly along 195th Street West to Flagstaff Avenue, southerly along Flagstaff Avenue to 200th Street West, westerly along 200th Street West to the western boundary of the city of Farmington.

Sec. 39. 2.413 (THIRTY-EIGHTH DISTRICT.)

Subdivision 1. (SENATE DISTRICT.) Senate district 38 consists of that portion of Dakota County consisting of the cities of Eagan, Lilydale, and Mendota, that portion of the city of Apple Valley not included in senate district 36, that portion of the city of Burnsville north and east of a line described as follows: commencing at the intersection of the northern bundary of ~~Dakota County~~ *the city of Burnsville* and Interstate Highway 35W, southerly along Interstate Highway 35W to the Chicago Northwestern Transportation Company railroad tracks, easterly along the Chicago and Northwestern Transportation Company railroad tracks to Cliff Road, southerly and easterly along Cliff Road to Nicollet Avenue, southerly along Nicollet Avenue to State Highway 13, northeasterly along State Highway 13 to Cliff Road, easterly along Cliff Road to the eastern boundary of the city of Burnsville, and that portion of the city of Mendota Heights lying west and south of a line described as follows: commencing at the intersection of the ~~northern~~ *northwestern* boundary of the city of Mendota Heights and ~~State Highway 13, southwesterly along State Highway 13 to~~ Wachtler Avenue, southerly along Wachtler Avenue to Wentworth Avenue, easterly along Wentworth Avenue to Dodd Road,

southwesterly along Dodd Road to Marie Avenue, easterly along Marie Avenue to the eastern boundary of the city of Mendota Heights.

Subd. 2. (HOUSE DISTRICTS.) Senate district 38 is divided into two house districts as follows:

(a) House district 38A consists of that portion of senate district 38 not included in house district 38B.

(b) House district 38A consists of that portion of the city of Apple Valley in senate district 38, that portion of the city of Burnsville east of a line described as follows: commencing at the intersection of State Highway 13 and the eastern boundary of the city of Burnsville, southwesterly along State Highway 13 to Cliff Road, easterly along Cliff Road to the eastern boundary of the city of Burnsville, and that portion of the city of Eagan lying south of a line described as follows: commencing at the intersection of the western boundary of the city of Eagan and Diffley Road, easterly along Diffley Road to Lexington Avenue, northerly along Lexington Avenue to Yankee Doodle Road, easterly along Yankee Doodle Road to the ~~Soo Line railroad tracks~~ *State Highway 149*, southeasterly along ~~the Soo Line railroad tracks~~ *State Highway 149* to the eastern boundary of the city of Eagan.

(b) House district 38B consists of that portion of senate district 38 not included in house district 38A.

Sec. 40 2.423 (THIRTY-NINTH DISTRICT.)

Subdivision 1. (SENATE DISTRICT.) Senate district 39 consists of that portion of Dakota County consisting of the cities of Inver Grove Heights, South St. Paul, Sunfish Lake, West St. Paul, and that portion of the city of Mendota Heights not included in senate district 38.

Subd. 2. (HOUSE DISTRICTS.) Senate district 39 is divided into two house districts as follows:

(a) House district 39A consists of that portion of senate district 39 consisting of the cities of West St. Paul and Sunfish Lake, that portion of the city of Mendota Heights included in senate district 39, that portion of the city of South St. Paul lying north and west of a line described as follows: commencing at the intersection of the southern

boundary of the city of South St. Paul and 18th Avenue South, northerly along 18th Avenue South to Southview ~~Boulevard~~ *an extension of 3rd Street South*, easterly along ~~Southview Boulevard~~ *the extension of 3rd Street South* to 17th Avenue South, northerly along 17th Avenue South to 4th Street North, easterly along 4th Street North to 14th Avenue North, northerly along 14th Avenue North to Wentworth Avenue, easterly along Wentworth Avenue and its extension to the Mississippi River, and that portion of the city of Inver Grove Heights lying west and north of a line described as follows: commencing at the intersection of the northern boundary of the city of Inver Grove Heights and Babcock Trail *East*, southerly along Babcock Trail *East and its extension across Interstate Highway 494* to upper 55th Street East, westerly along upper 55th Street East to the western boundary of the city of Inver Grove Heights.

(b) House district 39B consists of that portion of senate district 39 not included in house district 39A.

Sec. 41. 2.433 (FORTIETH DISTRICT.)

Subdivision 1. (SENATE DISTRICT.) Senate district 40 consists of *that portion of Hennepin County consisting of* that portion of the city of Bloomington not included in senate district 41, and that portion of the city of Richfield not included in senate district 63.

Subd. 2. (HOUSE DISTRICTS.) Senate district 40 is divided into two house districts as follows:

(a) House district 40A consists of that portion of senate district 40 *consisting of the city of Richfield and that portion of the city of Bloomington* lying ~~north and~~ east *and north* of a line described as follows: commencing at the intersection of the northern boundary of the city of Bloomington and Interstate Highway 35W, southerly along Interstate Highway 35W to the Soo Line railroad tracks, northeasterly along the Soo Line railroad tracks to *Lyndale Avenue South, southerly along Lyndale Avenue South to* 95th Street, easterly along 95th Street to *3rd Avenue South, southerly along 3rd Avenue South to 96th Street, easterly along 96th Street to* Chicago Avenue

South, northerly along Chicago Avenue South to 94th Street, easterly along 94th Street to *Riverview Avenue, southerly along Riverview Avenue to* Old Shakopee Road, northeasterly along Old Shakopee Road to Old Cedar Avenue, southeasterly along Old Cedar Avenue to the Minnesota River.

(b) House district 40B consists of that portion of senate district 40 not included in house district 40A.

Sec. 42 2.443 (FORTY-FIRST DISTRICT.)

Subdivision 1. (SENATE DISTRICT.) Senate district 41 consists of that portion of Dakota County consisting of that portion of the city of Burnsville not included in senate district 36 or 38, that portion of Scott County consisting of the city of Savage *and that portion of the city of Shakopee lying within a line described as follows: commencing at the intersection of County Road 18 and the eastern boundary of the city of Shakopee, southwesterly along County Road 18 to State Highway 101, and southeasterly along State Highway 101 to the eastern boundary of the city of Shakopee*, and that portion of Hennepin County consisting of that portion of the city of Bloomington lying west of a line described as follows: commencing at the intersection of the southern boundary of the city of Bloomington with ~~the~~ *an* extension of ~~France~~ *Irwin* Avenue ~~South~~, ~~north of~~ *northerly along* the extension of ~~France~~ *Irwin* Avenue ~~South~~ *and Irwin Avenue* to Overlook Drive, westerly along ~~west on~~ *westerly along* Overlook Drive to Normandale Boulevard, ~~north on~~ *northerly along* Normandale Boulevard to Old Shakopee Road, easterly along Old Shakopee Road to Kell Avenue, southerly along Kell Avenue to 108th Street, easterly along 108th Street to Xerxes Avenue South, northerly along Xerxes Avenue South to Old Shakopeee Road, northeasterly along Old Shakopee Road to Nine Mile Creek, northerly and westerly along Nine Mile Creek to West 90th Street, southwesterly along West 90th Street to Poplar Bridge Road, easterly along Poplar Bridge Road to Kingsdale Drive, southwesterly along Kingsdale Drive to

Poplar Bridge Road, southwesterly along Poplar Bridge Road to Normandale Boulevard, northerly along Normandale Boulevard to the northtern boundary of the city of Bloomington, and that portion of the city of Eden Prairie not included in senate district 42 or 43.

Subd. 2 (HOUSE DISTRICTS.) Senate district 41 is divided into two house districts as follows:

(a) House district 41A consists of that portion of senate district 41 lying north of a line described as follows: commencing with the intersection of Purgatory Creek and the western boundary of senate district 41, southeasterly along Purgatory Creek to Pioneer Trail, ~~southwesterly~~ *southeasterly* along Pioneer Trail to the Bloomington Ferry Road, southerly along the Bloomington Ferry Road to Old Shakopee Road, easterly along Old Shakopee Road to the eastern boundary of senate district 41.

(b) House district 41B consists of that portion of senate district 41 not included in house district 41A.

Sec. 43. 2.453 (FORTY-SECOND DISTRICT.)

Subdivision 1. (SENATE DISTRICT.) Senate district 42 consists of that portion of Hennepin County consisting of the city of Edina and that portion of the city of Eden Prairie not included in senate district 43 and lying west and north of a line described as follows: commencing at the intersection of the southern boundary of ~~Hennepin County~~ *the city of Eden Prairie* with the ~~extension~~ *NSP Power line that extends beyond the end* of Concord Drive, northerly along the ~~extension of Concord Drive~~ *NSP power line* to Riverview Road, westerly along Riverview Road to ~~Noder~~ *Mooer* Lane, northerly along ~~Noder~~ *Mooer* Lane to Silverwood Drive, easterly along Silverwood Drive to Homeward ~~Mills~~ *Hills* Road, northerly along Homeward ~~Mills~~ *Hills* Road to Anderson Lakes Parkway, easterly along Anderson Lakes Parkway to Hidden Oaks Drive, northeasterly along Hidden Oaks Drive and its extension to the southern shore of Anderson Lake, southerly, southeasterly, and northeasterly along the southern shore of Anderson Lake to the eastern boundary of the city of Eden Prairie.

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Williston Road to Lake Street *Extension*, easterly along Lake Street *Extension* to Christy *Maple* Lane, southerly along Christy *Maple* Lane to State Highway 7, easterly along State Highway 7 to Interstate Highway 494, southerly along Interstate Highway 494 to the southern boundary of the city of Minnetonka, the city of Minntonka Beach, that portion of the city of Orono lying south of the ~~northern shore~~ *channel between West Arm and Crystal Bay* of Lake Minnetonka, ~~along Crystal Bay, Smith Bay, and Browns Bay~~, the city of shorewood, the city of Tonka Bay, ~~the city of Wayzata~~, and the city of Woodland.

Subd. 2. (HOUSE DISTRICTS.) Senate district 43 is divided into two house districts as follows:

(a) House district 43A consists of that portion of senate district 43 consists of that portion of senate district 43 *lying in Carver County, and that portion of senate district 43 lying in Hennepin County* consisting of the cities of *Chanhassen*, Eden Prairie, Minnetonka Beach, Orono, and Tonka Bay, and that portion of the city of Shorewood lying west *of a line* described as follows: commencing at the intersection of the southern boundary of ~~Hennepin County~~ *the city of Shorewood and* ~~First Avenue~~ *Eureka Road*, northerly along ~~First Avenue~~ *Eureka Road* to Smithtown Road, westerly along Smithtown Road to Eureka Road, northerly along Eureka Road to Birch Bluff Road, easterly along Birch Bluff Road to the western boundary of the city of Tonka Bay.

(b) House district 43B consists of that portion of senate district 43 not included in house district 43A.

Sec. 45. 2.473 (FORTY-FOURTH DISTRICT.)

Subdivision 1. (SENATE DISTRICT.) Senate district 44 consists of that portion of Hennepin county consisting of the cities of Hopkins and St. Louis Park, and that portion of the city of Minnetonka lying south and east of a line described as follows: commencing at the intersection of Interstate Highway 494 and the southern boundary of the city of Minntonka, northerly along Interstate Highway 494 to Excelsior Boulevard, northeasterly and easterly along Excelsior Boulevard to *Shady Oak Road, and*

northerly along Shady Oak Road to the eastern boundary of the city of Minnetonka.

Subd. 2. (HOUSE DISTRICTS.) Senate district 44 is divided into two house districts as follows:

(a) *House district 44A consists of that portion of senate district 44 not included in house district 44B.*

(b) House district 44B consists of that portion of senate district 44 in the city of St. Louis Park lying east of a line described as follows: commencing at the intersection of the northern boundary of the city of St. Louis Park and Flag Avenue, southerly along Flag Avenue to Westmoreland Lane, easterly along Westmoreland Lane, Franklin Avenue, and its extension to Louisiana Avenue, southerly along Louisiana Avenue to the Burlington Northern railroad tracks, southwesterly along the Burlington Northern railroad tracks to Virginia Avenue, southerly along Virginia Avenue to West 28th Street, easterly along West 28th Street to Texas Avenue, southerly along Texas Avenue to the southern boundary of the city of St. Louis Park.

~~(b) House district 44A consists of that portion of senate district 44 not included in house district 44B.~~

Sec. 46. 2.483 (FORTY-FIFTH DISTRICT.)

Subdivision 1. (SENATE DISTRICT.) Senate district 45 consists of that portion of Hennepin County consisting of the city of Wayzata, that portion of the city of Golden Valley not included in senate district 46, the city of Medicine Lake, that portion of the city of Minnetonka not included in senate district 43 or 44, and that portion of the city of Plymouth lying south and east of a line described as follows: commencing at the intersection of the western boundary of the city of Plymouth with County Road 6, easterly along County Road 6 to Interstate Highway 494, northerly along Interstate Highway 494 to Rockford Road, easterly along Rockford Road to Zachary Lane, southerly along Zachary Lane to 36th Avenue North, easterly along 36th Avenue North to the eastern boundary of the city of Plymouth.

Subd. 2. (HOUSE DISTRICTS.) Senate district 45 is

Subd. 2. (HOUSE DISTRICTS.) Senate district 42 is divided into two house districts as follows:

(a) House district 42A *42B* consists of that portion of the city of Edina lying north and east of a line described as follows: commencing at the intersection of the western boundary of the city of Edina with State Highway 62, easterly along State highway 62 to State Highway 100, southerly along State Highway 100 to West 66th Street, easterly along West 66th Street to West Shore Drive, southeasterly along West Shore Drive to Laguna Drive, easterly along Laguna Drive to Wooddale Avenue, southerly along Wooddale Avenue to Dunberry Lane, easterly along Dunberry Lane to Cornelia Drive, southerly along Cornelia Drive to West 70th Street, easterly along West 70th Street to France Avenue, southerly along France Avenue to the southern boundary of the city of Edina.

(b) House District 42B *42A* consists of that portion of senate district 42 not contained in house district *42A 42B.*

Sec. 44. 2.463 (FORTY-THIRD DISTRICT.)

Subdivision 1. (SENATE DISTRICT.) Senate district 43 consists of that portion of Carver County consisting of the cities of Chanhassen and Victoria, and that portion of Hennepin County consisting of the ~~city~~ *cities* of *Chanhassen and* Deephaven, that portion of the city of Eden Prairie, ~~not included in senate district 42~~, *lying north and west of a line described as follows: commencing at the intersection of the western boundary of the city of Eden Prairie and the Soo Line railroad tracks, northeasterly along the Soo Line railroad tracks to Valley View Road, easterly along Valley View Road to Baker Road, northerly along Baker Road to the northern boundary of the city of Eden Prairie*, the city of Excelsior, the city of Greenwood, that portion of the city of Minnetonka lying south and west of a line described as follows: commencing at the intersection of the southern boundary of the city of Woodland and State Highway 101, southerly along State Highway 101 to Minntonka Boulevard, easterly along Minnetonka Boulevard to Williston Road, southerly along

divided into two house districts as follows:

(a) House district 45A consists of that portion of senate district 45 consisting of *the city of Wayzata*, that portion of the city of Minnetonka located in senate district 45, and that portion of the city of Plymouth located in senate district 45 lying west of Interstate Highway 494.

(b) House district 45B consists of that portion of senate district 45 not included in house district 45A.

Sec. 47. 2.493 (FORTY-SIXTH DISTRICT.)

Subdivision 1. (SENATE DISTRICT.) Senate district 46 consists of that portion of Hennepin County consisting of the cities of Crystal, New Hope, and Robbinsdale, that portion of the city of Golden Valley lying north and east *west* of a line described as follows: commencing at the intersection of the western border of the city of Golden Valley and the *an* extension of Earl Street, easterly along *the extension and* Earl Street to Independence Avenue North, northerly along Independence Avenue North to Duluth Street, easterly along Duluth Street to Winnetka Avenue, and northerly along Winnetka Avenue to the northern boundary of the city of Golden Valley, and that portion of the city of Brooklyn Center lying south of a line described as follows: commencing at the intersection of the western boundary of the city of Brooklyn Center and 58th Avenue North, easterly along 58th Avenue North to Shingle Creek, southerly along Shingle Creek to the southern boundary of the city of Brooklyn Center.

Subd. 2. (HOUSE DISTRICTS.) Senate district 46 is divided into two house districts as follows:

(a) House district 46A consists of that portion of senate district 46 *consisting of the city of New Hope, that portion of the city of Golden Valley included in senate district 46, and that portion of the city of Crystal* lying west of a line described as follows: commencing at the intersection of the northern boundary of the city of Crystal with U.S. ~~Highway~~ 52 *County Road 81*, southeasterly along U.S. ~~Highway~~ 52 *County Road 81* to the northern boundary of the city of Robbinsdale, westerly, *and* southerly, ~~and westerly~~ along the northern and western boundaries of

the city of Robbinsdale to ~~42nd~~ *43rd* Avenue North, westerly along ~~43rd~~ *Avenue North to* the ~~Soo~~ Line Railroad ~~Company tracks, southerly along the Soo Line Railroad Company tracks~~ *Brunswick Avenue North, southerly along Brunswick Avenue North to 42nd Avenue North, and westerly along 42nd Avenue North* to the western boundary of the city of Crystal; ~~westerly and southerly along the western boundary of the city of Crystal to the southern boundary of senate district 46~~.

(b) House disctict 46B consists of that portion of senate district 46 not included in house district 46A.

Sec. 48. 2.503 (FORTY-SEVENTH DISTRICT.)

Subdivision 1. (SENATE DISTRICT.) Senate district 47 consists of that portion of Hennepin County consisting of that portion of the city of Brooklyn Center not included in senate district 46 and that portion of the city of Brooklyn Park lying south and west of a line described as follows: commencing at the intersection of the western boundary of the city of Brooklyn Park and the southern boundary of the city of Osseo, easterly along the southern boundary of the city of Osseo to the Burlington Northern railroad tracks, southeasterly along the Burlington Northern railroad tracks to 85th Avenue North, easterly along 85th Avenue North to Xerxes Avenue, southerly along Xerxes Avenue to ~~81st Avenue North, easterly along 81st Avenue North and its extension to~~ Pearson Parkway, southeasterly along Pearson Parkway to Newton Avenue *North*, southerly along Newton Avenue *North* to the southern boundary of the city of Brooklyn Park.

Subd. 2. (HOUSE DISTRICTS.) Senate district 47 is divided into two house districts as follows:

(a) House district 47A consists of that portion of *the city of Brooklyn Park contained in* senate district 47 lying west of a line described as follows: commencing at the intersection of the northern boundary of senate district 47 and Noble Avenue, southerly along Noble Avenue to 83rd Avenue North, easterly along 83rd Avenue North to 82nd Avenue North, southerly and westerly along 82nd Avenue North to June Avenue, southerly along June Avenue *and*

Brookdale Drive to 73th Avenue North, westerly along 73th Avenue North to Lee Avenue, southerly and westerly along Lee Avenue to Major Avenue *North*, southerly and westerly along Major Avenue *North* to Noble Avenue North, Southerly along Noble Avenue North, to the southern boundary of ~~senate district 47~~ *the city of Brooklyn Park*.-

(b) House district 47B consists of that portion of senate district 47 not located in house district 47A.

Sec. 49. 2.513 (FORTY-EIGHTH DISTRICT.)

Subdivision 1. (SENATE DISTRICT.) Senate district 48 consists of that portion of Anoka County consisting of that portion of the city of Coon Rapids not included in senate district 49, the city of Spring Lake Park, that portion of the city of Blaine south and west of a line described as follows: commencing at the intersection of the western boundary of the city of Blaine with the right-of-way of State Highway 610, southeasterly along the right-of-way of State Highway 610 to Central Avenue Northeast, ~~southerly~~ *northerly* along Central Avenue Northeast to ~~89th Avenue, easterly along 89th Avenue Northeast and its extension to~~ *State Highway 118, southeasterly along State Highway 118 to an extension of* Hastings Street Northeast, southerly along *the extension and* Hastings Street Northeast to the southern boundary of the city of Blaine, and that portion of the city of Fridley lying north of a line described as follows: commencing at the intersection of the Mississippi River with Rice Creek, easterly along Rice Creek to East River Road, southeasterly along East River Road to *Mississippi Way, easterly along Mississippi Way to* Mississippi Street *Northeast*, easterly along Mississippi Street *Northeast* to Seventh Street Northeast, southerly along Seventh Street Northeast to 61st Avenue ~~East~~ *Northeast*, easterly along 61st Avenue ~~East~~ *Northeast* to West Moore Lake Drive, southeasterly along West Moore Lake Drive to State Highway 65, southerly along State Highway 65 to an extension of Lynde Drive *Northeast*, easterly along the extension of ~~Lynde Drive~~ and Lynde Drive *Northeast* to Regis Street

Drive Northeast, northerly along Regis ~~Street~~ *Drive Northeast to Hathaway Lane Northeast*, easterly along Hathaway Lane *Northeast and its extension* to Matterhorn Drive *Northeast*, northerly along Matterhorn Drive *Northeast* to Gardena Avenue, easterly along Gardena Avenue to the eastern boundary of the city of Fridley, that portion of Ramsey County consisting of the city of Spring Lake Park, and that portion of Hennepin County consisting of that portion of the city of Brooklyn Park not included in senate district 47, the city of Osseo, and that portion of the city of Champlin lying east of a line described as follows: commencing at the intersection of the southern boundary of the city of Champlin with ~~United States~~ *U.S.* Highway 169, northerly along U.S. Highway 169 to Hayden Lake Road, westerly along Hayden Lake Road to *the north-south NSP power line west of* Vera Street, northerly along ~~Vera Street and its extension to the extension of Baker Lane, northerly along Baker Lane and its extension~~ *the north-south NSP power line* French Lake Road, northeasterly along French Lake Road to Dayton ~~River~~ Road, Southeasterly along Dayton ~~River~~ Road *and its extension* to ~~United States~~ *U.S.* Highway 169, northerly along ~~United States~~ *U.S.* Highway 169 to the Mississippi River.

Subd. 2. (HOUSE DISTRICTS.) Senate district 48 is divided into two house districts as follows:

(a) House district 48A consists of that portion of senate district 48 not included in house district 48B.

(b) House district 48B consists of that portion of senate district 48 located in Anoka and Ramsey Counties.

Sec. 50. 2.523 (FORTY-NINTH DISTRICT.)

Subdivision 1. (SENATE DISTRICT.) Senate district 49 consists of that portion of Anoka County consisting of the city of Anoka and that portion of the city of Coon Rapids lying north of a line described as follows: commencing at the intersection of the Mississippi River with Coon Creek, northerly along Coon Creek to the Burlington Northern railroad tracks, southeasterly along the Burlington

Northern railroad tracks to Coon Rapids Boulevard *Extension*, easterly along Coon Rapids Boulevard *Extension* to the north-south Burlington Northern railroad tracks, northerly along the north-south Burlington Northern railroad tracks to Egret Boulevard *Northwest*, easterly along Egret Boulevard *Northwest*, easterly along Egret Boulevard *Northwest* to *U.S.* Highway 10, southeasterly along *U.S.* Highway 10 to ~~the extension of 94th Avenue, northeasterly along the extension of 94th Avenue~~ *Pleasure Creek, and northeasterly along Pleasure Creek* to the eastern boundary of the city of Coon Rapids.

Subd. 2. (HOUSE DISTRICTS.) Senate district 49 is divided into two house districts as follows:

(a) House district 49A consists of *the city of Anoka and* that portion of ~~senate district 49~~ *the city of Coon Rapids* lying north and west of a line described as follows: commencing at the intersection of the Mississippi River with the southern boundary of the campus of Anoka Ramsey State Community College, easterly along the southern boundary of the campus of Anoka Ramsey State Community College to Mississippi Boulevard, northerly along Mississippi Boulevard to Coon Rapids Boulevard, northwesterly along Coon Rapids Boulevard to Round Lake Boulevard, northerly along Round Lake Boulevard to 119th Avenue Northwest, easterly along 119th Avenue Northwest ~~an extension of Magnolia Street northerly along the extension of Magnolia Street~~ to the Burlington Northern railroad tracks, northwesterly along the Burlington Northern railroad tracks to Main Street, ~~easterly along Main Street to United States~~ *U.S.* Highway 10, ~~southeasterly along United States~~ *U.S.* Highway 10 to Hanson Boulevard, northeasterly along Hanson Boulevard to ~~North Dale~~ *Northdale* Boulevard, easterly along ~~North Dale~~ *Northdale* Boulevard to Sand Creek, northeasterly and southeasterly along Sand Creek to the eastern boundary of the city of Coon Rapids.

(b) House district 49B consists of that portion of senate district 49 not located in house district 49A.

Sec. 51. 2.533 (FIFTIETH DISTRICT.)

Subdivision 1. (SENATE DISTRICT.) Senate district 50 consists of that portion of Anoka County *consisting of the cities of Andover, Bethel, East Bethel, Ham Lake, Ramsey, and St. Francis, and the townships of Burns, Columbus, Linwood, and Oak Grove, and that portion of the city of Blaine lying north and west of a line described as follows: commencing at the intersection of University Avenue Northeast and Main Street, easterly along Main Street to Jefferson Street Northeast, northerly along Jefferson Street Northeast to 125th Lane Northeast, easterly along 125th Lane Northeast to County Ditch 60, northeasterly and southeasterly along County Ditch 60 to Polk Street Northeast, southerly along Polk Street Northeast to 126th Avenue Northeast, easterly along 126th Avenue Northeast to Taylor Street Northeast, northerly along Taylor Street Northeast to 128th Avenue Northeast, easterly along 128th Avenue Northeast to Lincoln Street Northeast, northerly along Lincoln Street Northeast to 129th Avenue Northeast, easterly along 129th Avenue Northeast to Johnson Street Northeast, northerly along Johnson Street Northeast to 129th Avenue Northeast, easterly along 129th Avenue Northeast to Central Avenue Northeast, northerly along Central Avenue Northeast to the northern boundary of the city of Blaine.*

Subd. 2. (HOUSE DISTRICTS.) Senate district 50 is divided into two house districts as follows:

(a) House district 50A consists of that portion of senate district 50 *consisting of the cities of Andover and Ramsey, that portion of the city of Blaine included in senate district 50, and that portion of the city of Ham Lake* lying ~~north~~ *west State Highway 65.*

(b) House district 50B consists of that portion of senate district 50 not included in house district 50A.

Sec. 52. 2.543 (FIFTY-FIRST DISTRICT.)

Subdivision 1. (SENATE DISTRICT.) Senate district 51 consists of that portion of Anoka County consisting of all of the cities of Centerville, Lexington, and Lino Lakes, and that portion of the city of Blaine not included in senate district 48, 50, or 53 and that portion of Washington

County *consisting of the cities of Forest Lake and Marine-on-St. Croix, the townships of Forest Lake, May, and New Scandia, and that portion of the city of Hugo lying west and* north of a line described as follows: commencing at the intersectin of the ~~western boundary of the city of Hugo with the southern boundary of the city of Hugo, easterly along~~ the southern boundary of the city of Hugo to *and* Goodview Avenue, *northeasterly and* northerly along Goodview Avenue to 137th Street North, easterly along 137th Street North to Homestead Avenue North, northerly along Homestead Avenue North to 140th Street North, *and* easterly along 140th Street North to the eastern boundary of the city of Hugo.

Subd. 2. (HOUSE DISTRICTS.) Senate district 51 is divided into two house districts as follows:

(a) House district 51A consists of the city of Lexington and that portion of the city of Blaine included in senate district 51.

(b) House district 51B consists of that portion of senate district 51 not included in house district 51A.

Sec. 53. 2.553 (FIFTY-SECOND DISTRICT.)

Subdivision 1. (SENATE DISTRICT.) Senate district 52 consists of that portion of Anoka County consisting of the cities of Columbia Heights and Hilltop and that portion of the city of Fridley not included in senate district 48, and that portion of Ramsey County consisting of the ~~city of Mounds View and the city of New Brighton~~ *cities of Blaine, Mounds View, and New Brighton.*

Subd. 2. (HOUSE DISTRICTS.) Senate district 52 is divided into two house districts as follows:

(a) House district 52A consists of that portion of senate district 52 not included in house district 52B.

(b) House district 52B consists of *that portion of Ramsey County consisting of* the ~~city~~ *cities* of *Blaine and* Mounds View and that portion of the city of New Brighton located ~~within~~ *north and east of* a line described as follows: commencing at the intersection of 16th Street Northwest with the western boundary of the city of New Brighton, easterly along ~~the western boundary of the city of New~~

Brighton *16th Street Northwest* to Silver Lake Road, southerly along Silver Lake Road to County Road E, ~~westerly along County Road E to the western boundary of the city of New Brighton, and northerly along the western boundary of the city of New Brighton to the point of origin~~ *the southern boundary of the city of New Brighton.*

Sec. 54. 2.563 (FIFTY-THIRD DISTRICT.)

Subdivision 1. (SENATE DISTRICT.) Senate district 53 consists of that portion of Ramsey County consisting of the cities of Arden Hills, ~~Shoreview~~ *Gem Lake*, North Oaks, ~~Gem Lake~~ *Shoreview*, and Vadnais Heights; that portion White Bear Township bordered by boundaries of Anoka Coutny and the cities of Shoreview and North Oaks; those portions of the city of White Bear Lake and White Bear Township lying ~~westerly~~ *west and north* of a line described as follows: commencing at the intersection of Otter Lake Road ~~with a railroad right of way~~ *and the northern boundary of the city of Gem Lake, northerly along Otter Tail Lake* Road to County Raod H-2 *East*, easterly along County Road H-2 ~~to Bald Eagle Boulevard, southerly along Bald Eagle Boulevard extending~~ *East and its extension* to the shoreline of Bald Eagle Lake, ~~northerly, easterly~~, and northerly along the shoreline of Bald Eagle Lake to the northern boundary of Ramsey County; and ~~those portions~~ *that portion* of the ~~cities~~ *city of Little Canada and Maplewood not included in senate districts district* ~~54, 55, and 57~~; *that portion of the city of Maplewood lying within a line described as follows: commencing at the intersection of the northern boundary of the city of Maplewood and White Bear Avenue, southerly along White Bear Avenue to County Road C, westerly along County Road C to Keller Parkway, northerly along Keller Parkway to the western boundary of the city of Maplewood, northerly and easterly along the boundary of the city of Maplewood to the point of origin;* and that portion of Anoka County consisting of the city of Circle Pines and ~~that portion~~ *those portions* of the city of Blaine lying ~~within~~ *east and south of* a line described as follows: commencing at the intersection of Interstate Highway

35W and the northern boundary of Ramsey County, northerly along Interstate Highway 35W to the extension of *89th Avenue Northeast, easterly along 89th Avenue Northeast to Naples Street Northeast, northerly along Naples Street Northeast to* Flowerfield Road, easterly along the extension and Flowerfield Road to Lexington Avenue, ~~and~~ northerly~~, easterly, southerly, easterly, southerly, and westerly along the boundaries of the city of Blaine to the point of origin~~ *along Lexington Avenue to Ball Road, easterly along Ball Road to Lever Street Northeast, southerly along Lever Street Northeast to 103rd Lane Northeast, and easterly along 103rd Lane Northeast to the eastern boundary of the city of Blaine.*

Subd. 2. (HOUSE DISTRICTS.) Senate district 53 is divided into two house districts as follows:

(a) House district 53A consists of that portion of senate district 53 not included in house district 53B.

(b) House district 53B consists of that portion of senate district 53 consisting of the cities of ~~North Oaks,~~ Gem Lake, *North Oaks,* and Vadnais Heights; those portions of *the cities of Little Canada and Maplewood,* White Bear Township, and the city of White Bear Lake ~~described in subdivision 1~~ *included in senate district 53,* and that portion of the city of Shoreview lying ~~westerly of Hodgson Road and that portion lying~~ within a line described as follows: commencing at the intersection of *State Highway 96 and* Hodgson Road, ~~and~~, *southeasterly along Hodgson Road to* Snail Lake Boulevard, to County Road F, westerly, southerly, and westerly, along Snail Lake Boulevard to County Road F, westerly along County Road F ~~along County Road F to Lexington Avenue and~~ the western boundary of the city *of Shoreview,* southerly, easterly, ~~and~~ northerly *and westerly* along the boundaries of the city of Shoreview to ~~Hodgson Road, and northwesterly along Hodgson Road to~~ the point of origin.

Sec. 55. 2.573 (FIFTY-FOURTH DISTRICT.)

Subdivision 1. (SENATE DISTRICT.) Senate district 54 consists of that portion of Ramsey County consisting of the cities of *Falcon Heights, Lauderdale,* Roseville, *and* St.

Anthony, ~~Lauderdale, and Falcon Heights,~~ that portion of the city of Maplewood lying within a line described as follows: commencing at the intersection of Rice Street and Larpenteur Avenue, easterly along Larpenteur Avenue to *the intersection of* DeSoto ~~Avenue~~ *Street and a railroad right-of-way, northeasterly along the railroad right-of-way and an extension of it to Parkway Drive, northeasterly along Parkway Drive to Frost Avenue, easterly along Frost Avenue to Atlantic Street, northerly along Atlantic Street and its extension* to *an extension of* the railroad right-of-way, northeasterly along *the extension and* the railroad right-of-way to Hazelwood Street, northerly along Hazelwood Street to State Highway 36, easterly along State Highway 36 to White Bear Avenue, northerly along White Bear Avenue to County Road C, westerly along County Road C ~~and its extension~~ *to Keller Parkway, northerly along Keller Parkway* to the western boundary of the city of Maplewood, southwesterly along the western boundary of the city of Maplewood to the point of origin; that porition of the city of Little Canada lying within a line described as follows: commencing at the intersection of the northern boundary of the city of Little Canada and Rice Street, southerly, easterly, and northerly along the boundary of the city of Little Canada to Keller Parkway, westerly and southerly along Keller Parkway to Little Canada Road, westerly along Little Canada Road to Interstate Highway 35E, northerly along Interstate Highway 35E to Interstate Highway 694, northwesterly along Interstate Highway 694 to the northern boundary of the city of Little Canada, and westerly along the northern boundary of the city of Little Canada to the point of origin, and that portion of Hennepin County consisting of the city of St. Anthony.

Subd. 2. (HOUSE DISTRICTS.) Senate district 54 is divided into two house districts as follows:

(a) House district 54A consists of that portion of senate district 54 not included in house district 54B.

(b) House district 54B consists of those portions of the cities of Little Canada and Maplewood ~~contained~~ *included*

in senate district 54, and that portion of the city of Roseville lying within *east and north of* a line described as follows: commencing at the intersection of Snelling Avenue with the northern boundary of the city *of Roseville*, southerly along Snelling Avenue to County Road C, easterly along County Road C to Hamline Avenue, southerly along Hamline Avenue to Trunk *State* Highway 36, easterly along trunk *State* Highway 36 to Lexington Avenue, southerly along Lexington Avenue to County Road B, *and* easterly along County Road B to the eastern boundary of the city of Roseville. ~~and northerly and easterly along the boundaries of the city of Roseville to the point of origin.~~

Sec. 56. 2.583 (FIFTY-FIFTH DISTRICT.)

Subdivision 1. (SENATE DISTRICT.) Senate district 55 consists of that portion of Ramsey County consisting of the city of North St. Paul; that portion of the city of White Bear Lake not included in senate district 53; that portion of White Bear Township not included in senate district 53; that portion of *the city of* Maplewood ~~lying within a line described as follows: commencing at the intersection of Century Avenue and Interstate Highway 694, westerly along Interstate Highway 694 to White Bear Avenue, southerly along White Bear Avenue to Trunk Highway 36, westerly along Trunk Highway 36 to Hazelwood Street, southerly along Hazelwood Street to a railroad right of way, westerly along the railroad right of way to Chamber Street, southerly along Chamber Street to Frost Avenue, westerly and southwesterly along Frost Avenue to the extension of said railroad right of way, southwesterly along the extension and the railroad right of way to Larpenteur Avenue, easterly along Larpenteur Avenue to Century Avenue, northerly along Century Avenue to Holloway Avenue and the southern boundary of the city of North St. Paul, westerly, northerly, and easterly along the boundaries of the city of North St. Paul to Century Avenue, and northerly along Century Avenue to the point of origin, and, that part of the city of St. Paul lying within a line described as follows: commencing at the intersection~~

~~of Larpenteur Avenue and Interstate Highway 35E, southerly along Interstate Highway 35E to Arlington Avenue, easterly along Arlington Avenue to Wheelock Parkway, easterly along Wheelock Parkway and its extension to the shoreline of Lake Phalen, southeasterly along the shoreline of Lake Phalen and an extension of the shoreline to Johnson Parkway, southerly along Johnson Parkway to Maryland Avenue, easterly along Maryland Avenue to Kennard Street, northerly along Kennard Street to Sherwood Avenue, easterly along Sherwood Avenue to White Bear Avenue, northerly along White Bear Avenue to Larpenteur Avenue, and westerly along Larpenteur Avenue to the point of origin, and, that portion of Washington County lying within a line described as follows: the intersection of the southerly shoreline of White Bear Lake with the boundary between Ramsey and Washington counties, southeasterly along the shoreline and its extension to Cedar Hall Avenue, southeasterly along Cedar Hall Avenue to Wildwood Road, northeasterly along Wildwood Road to Ideal Avenue North, southerly along Ideal Avenue North to the boundaries of the city of Pine Springs, easterly, southerly, easterly, southerly, easterly, and southerly along the boundaries of the city of Pine Springs to Interstate Highway 694, westerly to the eastern boundary of Washington County, and northerly along the boundary to the point of origin~~ *not contained in senate district 53, 54, or 57, and that portion of the city of St. Paul not contained in senate district 64, 65, 66, or 67; and that portion of Washington County consisting of the cities of Birchwood Village, White Bear Lake, and Willernie, and that portion of the city of Mahtomedi lying south and west of a line described as follows: commencing at the intersection of the western boundary of the city of Mahtomedi and Birchwood Road, easterly along Birchwood Road to Wildwood Road, northeasterly along Wildwood Road to Stillwater Road, easterly along Stillwater Road to the western boundary of the city of Willernie, northerly, easterly, and southerly along the boundary of the city of*

Willernie to Stillwater Road, easterly along Stillwater Road to Hilton Trail, and southerly along Hilton Trail to the southern boundary of the city of Mahtomedi.

Subd. 2. (HOUSE DISTRICTS.) Senate district 55 is divided into two house districts as follows:

(a) House district 55A consists of that portion of senate district 55 not included in house district 55B.

(b) House district 55B consists of ~~that portion of Washington County included in senate district 55 and~~ that portion of Ramsey County consisting of the city of North St. Paul and those portions of the cities of Maplewood and St. Paul included in senate district 55.

Sec. 57. 2.593 (FIFTY-SIXTH DISTRICT.)

Subdivision 1. (SENATE DISTRICT.) Senate district 56 consists of that portion of Washington County not included in senate district *29,* 51, 55, or 57.

Subd. 2. (HOUSE DISTRICTS.) Senate district 56 is divided into two house districts as follows:

(a) House district 56A consists of that portion of senate district 56 north of a line described as follows: commencing at the intersection of the western boundary of Washington County with the southern boundary of the city of Mahtomedi easterly and northeasterly along the southern boundary of the city of Mahtomedi to the western boundary of Grant Township, southerly along the western boundary of Grant Township to the southern boundary of Grant Township, easterly along the southern boundary of Grant Township to the western boundary of Baytown Township southerly along the western boundary of Baytown Township to the southern boundary of Baytown Township, easterly along the southern boundary of Baytown Township to the eastern boundary of ~~senate district 56~~ *Washington County.*

(b) House district 56B consists of that portion of senate district 56 not included in house district 56A.

Sec. 58. 2.603 (FIFTY-SEVENTH DISTRICT.)

Subdivision 1. (SENATE DISTRICT.) Senate district 57 consists of that portion of Ramsey County consisting of that portion of the city of Maplewood lying south of

Larpenteur Avenue, and that portion of Washington County *consisting of the cities of Cottage Grove, Landfall, Newport, and St. Paul Park, the township of Grey Cloud Island, and that portion of the city of Oakdale* south and west of a line described as follows: commencing at the intersection of the western boundary of ~~Washington County~~ *the city of Oakdale* and the Chicago and Northwestern Transportation Company railroad tracks, ~~in the city of Oakdale~~, easterly along the Chicago and Northwestern Transportation Company railroad tracks to Interstate Highway 694, southerly along Interstate Highway 694 to *the southern boundary of the city of Oakdale; and that portion of the city of Woodbury lying west of a line described as follows: commencing at the intersection of the northern boundary of the city of Woodbury and Interstate Highway 494, southerly along Interstate Highway 494 to* Valley Creek Road, easterly along Valley Creek Road to ~~Queens Drive, southerly along Queens Drive to Afton Road, southeasterly along Afton Road to Tower Drive, northerly along Tower Drive to Valley Creek Road, easterly along Valley Creek Road to~~ *Interlachen Parkway, southerly along Interlachen Parkway to* Pioneer Drive, southerly along Pioneer Drive to Bailey Road, easterly along Bailey Road to Woodbury Drive, *and* southerly along Woodbury Drive to the southern boundary of the city of Woodbury. ~~easterly along the southern boundary of Woodbury to the eastern boundary of the city of Cottage Grove, southerly and westerly along the eastern and southern boundaries of Cottage Grove to the Mississippi River.~~

Subd. 2. (HOUSE DISTRICTS.) Senate district 57 is divided into two house districts as follows:

(a) House district 57A consists *of that portion of Ramsey County consisting of the portion of the city of Maplewood included in senate district 57 and that portion of Washington County consisting* of the city of Landfall and those portions of the cities of Oakdale and Woodbury included in senate district 57.

(b) House district 57B consists of that portion of senate

district 57 not included in house district 57A.

Sec. 59. 2.613 (FIFTY-EIGHTH DISTRICT.)

Subdivision 1. (SENATE DISTRICT.) Senate district 58 consists of that portion of Hennepin County consisting of that portion of the city of Minneapolis located within an area described as follows: commencing at the intersection of the western boundary of the city of Minneapolis and Glenwood Avenue, easterly along Glenwood Avenue to the Burlington Northern railroad tracks, southeasterly and northeasterly along the Burlington Northern railroad tracks to Interstate Highway 94, southerly along Interstate Highway 94 to Interstate Highway 394, easterly along Interstate Highway 394 to Hawthorne Avenue, northeasterly along Hawthorne Avenue to 9th Street North, southerly along 9th Street North to Hennepin Avenue, northeasterly along Hennepin Avenue to Washington Avenue North, nortwesterly along Washington Avenue North to Plymouth Avenue North, easterly ~~and northeasterly~~ along Plymouth Avenue North to the Mississippi River, ~~northwesterly~~ *northerly* along the Mississippi River to the northern boundary of the city of Minneapolis, westerly along the northern boundary of the city of Minneapolis to the western boundary of the city of Minneapolis southerly along the western boundary of the city of Minneapolis to the point of origin.

Subd. 2. (HOUSE DISTRICTS.) Senate district 58 is divided into two house districts as follows:

(a) House district 58A consists of that portion of senate district 58 lying north of a line described as follows: commencing at the intersection of the western boundary of the city of Minneapolis and 21st Avenue North, easterly along 21st Avenue North to Upton Avenue North, northerly along Upton Avenue North to 24th Avenue North, easterly on 24th Avenue North to Sheridan Avenue North, northerly along Sheridan Avenue North to 26th Avenue North, easterly along 26th Avenue North to Penn Avenue North, northerly along Penn Avenue North to 29th Avenue North, easterly along 29th Avenue North to Humboldt Avenue North, northerly along Humboldt

Avenue North to 30th Avenue North, easterly along 30th Avenue North to Dupont Avenue North, northerly along Dupont Avenue North to Lowry Avenue North, Easterly along Lowry Avenue North to the eastern boundary of senate district 58 *Mississippi River.*

(b) House district 58B consists of that portion of senate district 58 not included in house district 58A.

Sec. 60. 2.623 (FIFTY-NINTH DISTRICT.)

Subdivision 1. (SENATE DISTRICT.) Senate district 59 consists of that portion of Hennepin County consisting of that portion of the city of Minneapolis located within an area described as follows: commencing at the intersection of the Mississippi River and the northern boundary of the city of Minneapolis, easterly along the northern boundary of the city of Minneapolis to the eastern boundary of the city of Minneapolis, southerly along the eastern boundary of the city of Minneapolis to the Mississippi River, northwestelry along the Mississippi River to ~~U.S.~~ *State* Highway ~~12~~ *122*, southwesterly along ~~U.S.~~ *State* Highway ~~12~~ *122* to Interstate Highway 35W, southwesterly along Interstate Highway 35W to 7th Street South, northwesterly along 7th Street South to 5th Avenue South, southwesterly along 5th Avenue South to 9th Street South, northwesterly along 9th Street South to the eastern boundary of senate district 58, northerly along the eastern boundary of senate district 58 to the point of origin.

Subd. 2. (HOUSE DISTRICTS.) Senate district 59 is divided into two house districts as follows:

(a) House district 59A consists of that portion of senate district 59 lying north of a line described as follows: commencing at the intersection of the Mississippi River and 8th Avenue Northeast, northeasterly along 8th Avenue Northeast to the east bank of the Mississippi River, southeasterly along the east bank of the Mississippi River to *an extension of* 3rd Avenue Northeast, northeasterly along *the extension and* 3rd Avenue Northeast to 5th Street Northeast, northwesterly along 5th Street Northeast to Broadway Street Northeast, easterly along Broadway Street Northeast to Central Avenue Northeast, northerly

along Central Avenue Northeast to the Burlington Northern railroad tracks, southeasterly along the Burlington Northern railroad tracks to Fillmore Street Northeast, northerly along Fillmore Street Northeast to 14th Avenue Northeast, easterly along 14th Avenue Northeast to Johnson Street Northeast, southerly along Johnson Street Northeast to Interstate Highway 35W, northeasterly and easterly along Interstate Highway 35W to the eastern boundary of the city of Minneapolis.

(b) house district 59B consists of that portion of senate district 59 not included in house district 59A.

Sec. 61. 2.633 (SIXTIETH DISTRICT.)

Subdivision 1. (SENATE DISTRICT.) Senate district 60 consists of that portion of Hennepin County consisting of that portion of the city of Minneapolis located within an area described as follows: commencing at the intersection of the western boundary of the city of Minneapolis and West 50th Street, easterly along West 50th Street to Penn Avenue South, northerly along Penn Avenue South to Lake Harriet Parkway, easterly and northeasterly along Lake Harriet Parkway to West 46th Street, easterly along West 46th Street to Nicollet Avenue South, northerly along Nicollet Avenue South to West 36th Street, westerly along West 36th Street to Blaisdell Avenue South, northerly along Blaisdell Avenue South to West 34th Street, westerly along West 34th Street to Grand Avenue South, northerly along Grand Avenue South to West 32nd Street, westerly along West 32nd Street to Harriet Avenue South, northerly along Harriet Avenue South to West 31st Street, westerly along West 31st Street to Garfield Avenue South, northerly along Garfield Avenue South to West Lake Street, westerly along West Lake Street to Lyndale Avenue South, northerly along Lyndale Avenue South to Interstate Highway 94, easterly along Interstate Highway 94 and Interstate Highway 35W to the southern boundary of senate district 59, northwesterly along the southern boundary of senate district 59 to the southern boundary of senate district 58, westerly along the southern boundary of senate district 58 to the western boundary of

the city of Minneapolis, southerly along the western boundary of the city of Minneapolis to the point of origin.

Subd. 2. (HOUSE DISTRICTS.) Senate district 60 is divided into two house districts as follows:

(a) House district 60A consists of that portion of senate district 60 lying north of ~~a line described as follows: commencing at the intersection of the western boundary of the city of Minneapolis and~~ West Lake Street, ~~easterly along West Lake Street to the eastern boundary of senate district 60.~~

(b) House district 60B consists of that portion of senate district 60 not included in house district 60A.

Sec. 62. 2.643 (SIXTY-FIRST DISTRICT.)

Subdivision 1. (SENATE DISTRICT.) Senate district 61 consists of that portion of Hennepin County consisting of that portion of the city of Minneapolis located within an area described as follows: commencing at the intersection of Lyndale Avenue South and Interstate Highway 94, easterly ~~and northeasterly~~ along Interstate Highway 94 and *northeasterly along* Interstate Highway 35W to ~~U.S.~~ *State* Highway ~~12~~ *122*, easterly along ~~U.S.~~ *State* Highway ~~12~~ *122* to Cedar Avenue South, southerly along Cedar Avenue South *and its extension to the Soo Line railroad tracks, southeasterly along the Soo Line railroad tracks to Cedar Avenue South, southwesterly along Cedar Avenue South* to Hiawatha Avenue, southerly along Hiawatha Avenue to East 28th Street, westerly along East 28th Street to 21st Avenue South, southerly along 21st Avenue South to East 32nd Street, westerly along East 32nd Street to 19th Avenue South, southerly along 19th Avenue South to East 34th Street, westerly along East 34th Street to Bloomington Avenue South, southerly along Bloomington Avenue South to East 36th Street, westerly along East 36th Street to 10th Avenue South, southerly along 10th Avenue South to East 38th Street, westerly along East 38th Street to Elliot Avenue South, southerly along Elliot Avenue South to East 44th Street, westerly along East 44th Street to Chicago Avenue South, southerly along Chicago Avenue South to East 50th Street, westerly along

East 50th Street to Park Avenue South, southerly along Park Avenue South to East Minnehaha Parkway, westerly along East Minnehaha Parkway to East 50th Street, westerly along East 50th Street to Stevens Avenue South, northerly along Stevens Avenue South to East 46th Street, westerly along East 46th Street to the eastern boundary of senate district 60, northerly along the eastern boundary of senate district 60, to the point of origin.

Subd. 2. (HOUSE DISTRICTS.) Senate district 61 is divided into two house districts as follows:

(a) House district 61A consists of that portion of senate district 61 lying north of a line described as follows: commencing at the intersection of ~~the western boundary of senate district 61~~ *Lyndale Avenue South* and West 25th Street, easterly along West 25th Street to Pillsbury Avenue South, southerly along Pillsbury Avenue South to West 26th Street, easterly along West 26th Street to 1st Avenue South, southerly along 1st Avenue South to West Lake Street, easterly along West lake Street to the eastern boundary of senate district 61.

(b) House district 61B consists of that portion of senate district 61 not included in house district 61A.

Sec. 63. 2.653 (SIXTY-SECOND DISTRICT.)

Subdivision 1. (SENATE DISTRICT.) Senate district 62 consists of that portion of Hennepin County consisting of that portion of the city of Minneapolis located within an area described as follows: commencing at the intersection of ~~U.S.~~ *State* Highway ~~12~~ *122* and Cedar Avenue South, northeasterly along ~~U.S.~~ *State* Highway ~~12~~ *122* to the Mississippi River, southeasterly and southerly along the Mississippi River to ~~the~~ *an* extension of East 54th Street, westerly along the extension of East 54th Street and East 54th Street to 40th Avenue South, southerly along 40th Avenue South to East 55th Street, easterly along East 55th Street to 41st Avenue South, southerly along 41st Avenue South to East 56th Street, westerly along East 56th Street to 28th Avenue South, southerly along 28th Avenue South to East 58th Street, westerly along East 58th Street and its extension to 14th Avenue South,

northerly along 14th Avenue South to East 54th Street, easterly along East 54th Street to Bloomington Avenue South, northerly along Bloomington Avenue South to East 48th Street, westerly along East 48th Street to the eastern boundary of senate district 61, northerly along the eastern boundary of senate district 61 to the point of origin.

Subd. 2. (HOUSE DISTRICTS.) Senate district 62 is divided into two house districts as follows:

(a) House district 62A consists of that portion of senate district 62 lying north of a line described as follows: commencing at the intersection of the western boundary of senate district 62 and East 36th Street, easterly along East 36th Street to Cedar Avenue South, southerly along Cedar Avenue South to East 38th Street, easterly along East 38th Street to Hiawatha Avenue, southeasterly along Hiawatha Avenue to East 42nd Street, easterly along East 42nd Street and its extension to the Mississippi River.

(b) House district 62B consists of that portion of senate district 62 not included in house district 62A.

Sec. 64. 2.663 (SIXTY-THIRD DISTRICT.)

Subdivision 1. (SENATE DISTRICT.) Senate district 63 consists of that portion of Hennepin County consisting of that portion of the city of Minneapolis not contained in senate district ~~57,~~ 58, 59, 60, ~~or~~ 61, *or 62*, that portion of the city of Richfield lying north of a line described as follows: commencing at the intersection of the western boundary of the city of Richfield and West 67th Street, easterly along West 67th Street *and its extension* to Interstate Highway 35W, southerly along Interstate Highway 35W to West 73rd Street, easterly along West 73rd Street to 2nd Avenue South, southerly along 2nd Avenue South to the southern boundary of the city of Richfield, easterly along the southern boundary of the city of Richfield to the eastern boundary of the city of Richfield; *and* the unorganized territory of Fort Snelling; ~~and the Minneapolis-Saint Paul International Airport~~.

Subd. 2. (HOUSE DISTRICTS.) Senate district 63 is

divided into two house districts as follows:

(a) House district 63A consists of that portion of senate district 63 north of a line described as follows: commencing at the intersection of the western boundary of the city of Minneapolis and State Highway 62, easterly along State Highway 62 to Lyndale Avenue South, northerly along Lyndale Avenue South to West 58th Street, easterly along West 58th Street *and its extension* to Interstate Highway 35W, southerly along Interstate Highway 35W to East 60th Street, easterly along East 60th Street to Portland Avenue South, northerly along Portland Avenue South to East 57th Street, southeasterly along East 57th Street to Chicago Avenue South, southerly along Chicago Avenue South to East 58th Street, easterly along East 58th Street to the western boundary of senate district 62.

(b) House district 63B consists of that portion of senate district 63 not included in house district 63A.

Sec. 65. 2.673 (SIXTY-FOURTH DISTRICT.)

Subdivision 1. (SENATE DISTRICT.) Senate district 64 consists of that portion of Ramsey County consisting of that portion of the city of St. Paul located within an area described as follows: commencing at the intersection of the western boundary of the city of St. Paul and the southern boundary of senate district 66, easterly along the southern boundary of senate district 66 to Hamline Avenue, southerly along Hamline Avenue to Ayd Mill Road, southeasterly along Ayd Mill Road to Summit Avenue, easterly along Summit Avenue to Griggs Street, northerly along Griggs Street to Portland Avenue, easterly along Portland *to Victoria Street, southerly along Victoria Street to Portland Avenue, easterly along Portland Avenue* to Dale Street, southerly along Dale Street to Summit Avenue, easterly and northeasterly along Summit Avenue to Western Avenue, southerly along Western Avenue and its extension to Ramsey Street, easterly along Ramsey Street and Grand Avenue to Interstate Highway 35E, southwesterly along Interstate Highway 35E to ~~St. Clair Avenue, westerly along St. Clair Avenue to Victoria Avenue, southerly along Victoria Avenue to Jefferson~~

~~Avenue, westerly along Jefferson Avenue to Interstate Highway 35E, southerly along Interstate Highway 35E to~~ the southern boundary of the city of St. Paul, southwesterly, ~~northerly, westerly,~~ and northwesterly along the ~~southern boundary of the city of St. Paul to the western boundary of the city of St. Paul, northerly along the western~~ boundary of the city of St. Paul to the point of origin.

Subd. 2. (HOUSE DISTRICTS.) Senate district 64 is divided into two house districts as follows:

(a) House district 64A consists of that portion of senate district 64 lying north of a line described as follows: commencing at the intersection of the western boundary of the city of St. Paul and the extension of St. Clair Avenue, easterly along the extension of St. Clair Avenue and St. Clair Avenue to Snelling Avenue, southerly along Snelling Avenue to Jefferson Avenue, easterly along Jefferson Avenue to ~~Lexington Parkway, northerly along Lexington Parkway to the Soo Line railroad tracks, easterly along the Soo Line railroad tracks to the eastern boundary of senate district 64B~~ *Interstate Highway 35E.*

(b) House district 64B consists of that portion of senate district 64 not included in house district 64A.

Sec. 66. 2.683 (SIXTY-FIFTH DISTRICT.)

Subdivision 1 (SENATE DISTRICT.) Senate district 65 consists of that portion of Ramsey County consisting of that portion of the city of St. Paul located within an area described as follows: commencing at the intersection of the southern boundary of the city of St. Paul and the eastern boundary of senate district 64, northerly, easterly, northerly, and northeasterly along the eastern boundary of senate district 64 to Grand Avenue, westerly along Grand Avenue and Ramsey Street to the extension of Western Avenue, northerly along the extension of Western Avenue and Western Avenue to Summit Avenue, southwesterly and westerly along Summit Avenue to Dale Street, northerly along Dale Street to Portland Avenue, westerly along Portland Avenue *to Victoria Street, northerly along Victoria Street to Portland Avenue, westerly*

along Portland Avenue to Griggs Street, southerly along Griggs Street to Summit Avenue, Westerly along Summit Avenue to Ayd Mill Road, northwesterly along Ayd Mill Road to Hamline Avenue, northerly along Hamline Avenue to Charles Avenue, easterly along Charles Avenue to Lexington Parkway, northerly along Lexington Parkway to Minnhaha Avenue, easterly along Minnehaha Avenue to Dale Street, northerly along Dale Street to the Burlington Northern railroad tracks, easterly along the Burlington Northern railroad tracks past Interstate Highway 35E to the north-south Burlington Northern railroad tracks, southeasterly along the north-south Burlington Northern railroad tracks and their extension to the Mississippi River, southerly along the Mississippi River to the southern boundary of the city of St. Paul, westerly and southwesterly along the southern boundary of the city of St. Paul to the point of origin.

Subd. 2. (HOUSE DISTRICTS.) Senate district 65 is divided into two house districts as follows:

(a) House district 65A consists of that portion of senate district 65 lying west of a line described as follows: commencing at the intersection of the northern boundary of senate district 65 and Rice Street, southerly along Rice Street to John Ireland Boulevard, southwesterly along John Ireland Boulevard to Summit Avenue, southwesterly along Summit Avenue to the southern boundary of senate district 65.

(b) House district 65B consists of that portion of senate district 65 not included in house district 65A.

Sec. 67. 2.693 (SIXTY-SIXTH DISTRICT.)

Subdivision 1. (SENATE DISTRICT.) Senate district 66 consists of that portion of Ramsey County consisting of that portion of the city of St. Paul located within an area described as follows: commencing at the intersection of the western boundary of the city of St. Paul with the northern boundary of the city of St. Paul, easterly along the northern boundary of the city of St. Paul to Interstate Highway 35E, southerly along Interstate Highway 35E to Arlington Avenue, easterly ~~and southeasterly~~ along

Arlington Avenue ~~and~~ *to* Wheelock Parkway, *southeasterly along Wheelock Parkway to Johnson Parkway, southeasterly along Johnson Parkway* to Maryland Avenue, westerly along Maryland Avenue to Edgerton Street, southerly along Edgerton Street to *East* Cook Avenue, westerly along *East* Cook Avenue to DeSoto Street, southerly along DeSoto Street to Case Avenue, westerly along Case Avenue and its extension to Interstate Highway 35E, southerly along Interstate Highway 35E to the *east-west* Burlington Northern railroad tracks, westerly along the *east-west* Burlington Northern railroad tracks to Dale Street, southerly along Dale Street to Minnehaha Avenue, westerly along Minnehaha Avenue to Lexington Parkway, southerly along Lexington Parkway to Charles Avenue, westerly along Charles Avenue to Hamline Avenue, southerly along Hamline Avenue to Interstate Highway 94, westerly along Interstate Highway 94 to the western boundary of the city of St. Paul, northerly along the western boundary of the city of St. Paul to the point of origin.

Subd. 2. (HOUSE DISTRICTS.) Senate district 66 is divided into two house districts as follows:

(a) House district 66A consists of that portion of senate ~~portion~~ *district* 66 lying east of a line described as follows: commencing at the intersection of the northern boundary of the city of St. Paul with Grotto Street, southerly along Grotto Street to Arlington Avenue, westerly along Arlington Avenue to Lexignton Parkway, ~~southerly~~ *southeasterly* along Lexington Parkway to East Como Lake ~~Road~~ *Drive*, ~~southerly~~ *southeasterly* along East Como Lake ~~Road~~ *Drive* to ~~Victoria Street~~ *East Como Boulevard*, southerly along ~~Victoria Street~~ *East Como Boulevard* to the Burlington Northern railroad tracks, westerly along the Burlington Northern railroad tracks to Chatsworth Street, southerly along Chatsworth Street to Front Avenue, easterly along Front Avenue to Western Avenue, southerly along Western Avenue to the Southern boundary of senate district 66.

(b) House District 66B consists of that portion of senate

district 66 not included in house district 66A.

Sec. 68. 2.703 (SIXTY-SEVENTH DISTRICT.)

Subdivision 1. (SENATE DISTRICT.) Senate district 67 consists of that portion of Ramsey County consisting of that portion of the city of St. Paul located within an area described as follows: commencing at the intersection of the southern boundary of the city of St. Paul with eastern boundary of senate district 65, northerly and northwesterly along the eastern boundary of senate district 65 to the northern boundary of senate district 65, westerly along the northern boundary of senate district 65 to the eastern boundary of senate district 66, northerly and easterly along the eastern boundary of senate district 66 to Maryland Avenue, easterly along Maryland Avenue to Kennard Street, northerly along Kennard Street to Sherwood Avenue, easterly along Sherwood Avenue to White Bear Avenue, northerly along White Bear Avenue to the northern boundary of the city of St. Paul, easterly along the northern boundary of the city of St. Paul to the eastern boundary of the city of St. Paul, southerly along the eastern boundary of the city of St. Paul to the southern boundary of the city of St. Paul, westerly and northwesterly along the southern boundary of the city of St. Paul to the point of origin.

Subd. 2. (HOUSE DISTRICTS.) Senate district 67 is divided into two house districts as follows:

(a) House district 67A consists of that portion of senate district 67 lying north of a line described as follows: commencing at the intersection of the eastern boundary of senate district 67 with ~~Old Hudson Road~~ *Interstate Highway 94*, westerly along ~~Old Hudson Road~~ *Interstate Highway 94* to Ruth Street, northerly along Ruth Street to *East* Minnehaha Avenue, ~~easterly~~ *westerly* along Minnehaha Avenue to Frank Street, northerly along Frank Street to East Seventh Street, ~~easterly~~ *westerly* along East Seventh Street to Earl Street, northerly along Earl Street to the Burlington Northern railroad tracks, ~~easterly~~ *westerly* along the Burlington Northern railroad tracks to the ~~eastern~~ *western* boundary of senate district

67.

(b) House district 67B consists of that portion of senate district 67 not included in house district 67A.

Sec. 69. (2.713) (CONTROLLING DESCRIPTION.)

If a territory in this state is not named in sections 2 to 68, but (1) lies within the boundaries of a legislative district, or (2) lies between the boundaries of two or more legislative districts, for the purposes of sections 2 to 68, the territory referred to in clause (1) is a part of the legislative district within which it lies, and the territory referred to in clause (2) is a part of the contiguous legislative district having the smallest population.

If a territory in this state is within the boundaries of two or more legislative districts, for the purposes of sections 2 to 68, the territory is a part of the contiguous legislative district having the smallest population.

Sec. ~~69~~. *70.* (REPEALER.)

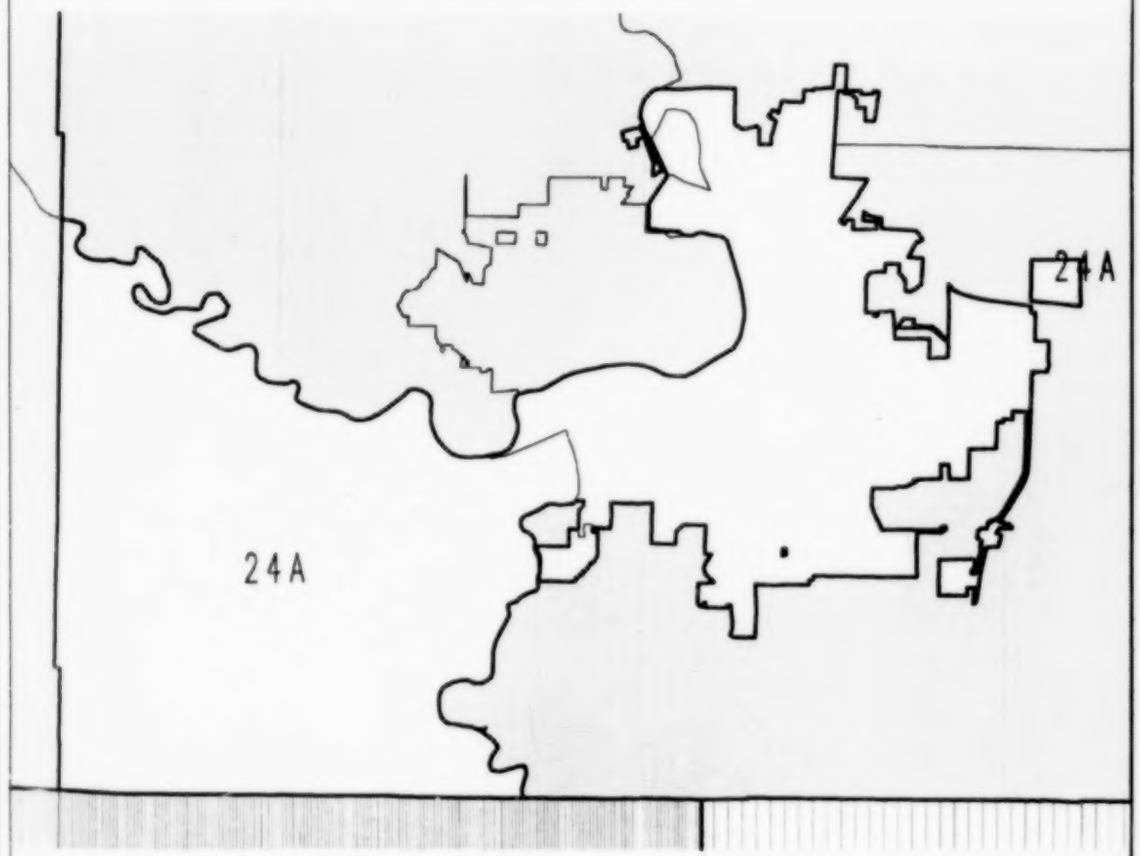
Minnesota Statutes 1990, sections 2.019; 2.042; 2.052; 2.062; 2.072; 2.082; 2.092; 2.102; 2.112; 2.122; 2.132; 2.142; 2.152; 2.162; 2.172; 2.182; 2.192; 2.202; 2.212; 2.222; 2.232; 2.242; 2.252; 2.262; 2.272; 2.282; 2.292; 2.302; 2.312; 2.322; 2.332; 2.342; 2.352; 2.362; 2.372; 2.382; 2.392; 2.402; 2.412; 2.422; 2.432; 2.442; 2.452; 2.462; 2.472; 2.482; 2.492; 2.502; 2.512; 2.522; 2.532; 2.542; 2.552; 2.562; 2.572; 2.582; 2.592; 2.602; 2.612; 2.622; 2.632; 2.642; 2.652; 2.662; 2.672; 2.682; 2.692; and 2.702, are repealed.

Sec. 2. (EFFECTIVE DATE.)

Section 1 is effective for the state primary election in 1992 and thereafter.

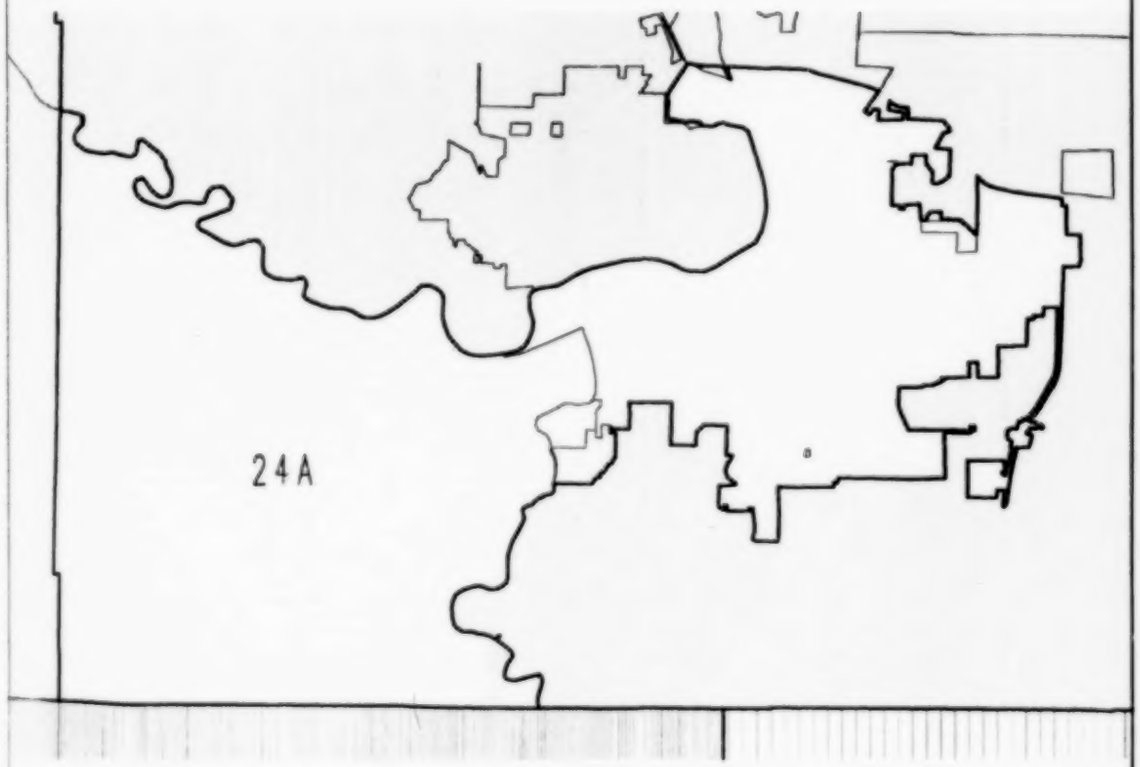
District 24A

Proposed Legislative Districts

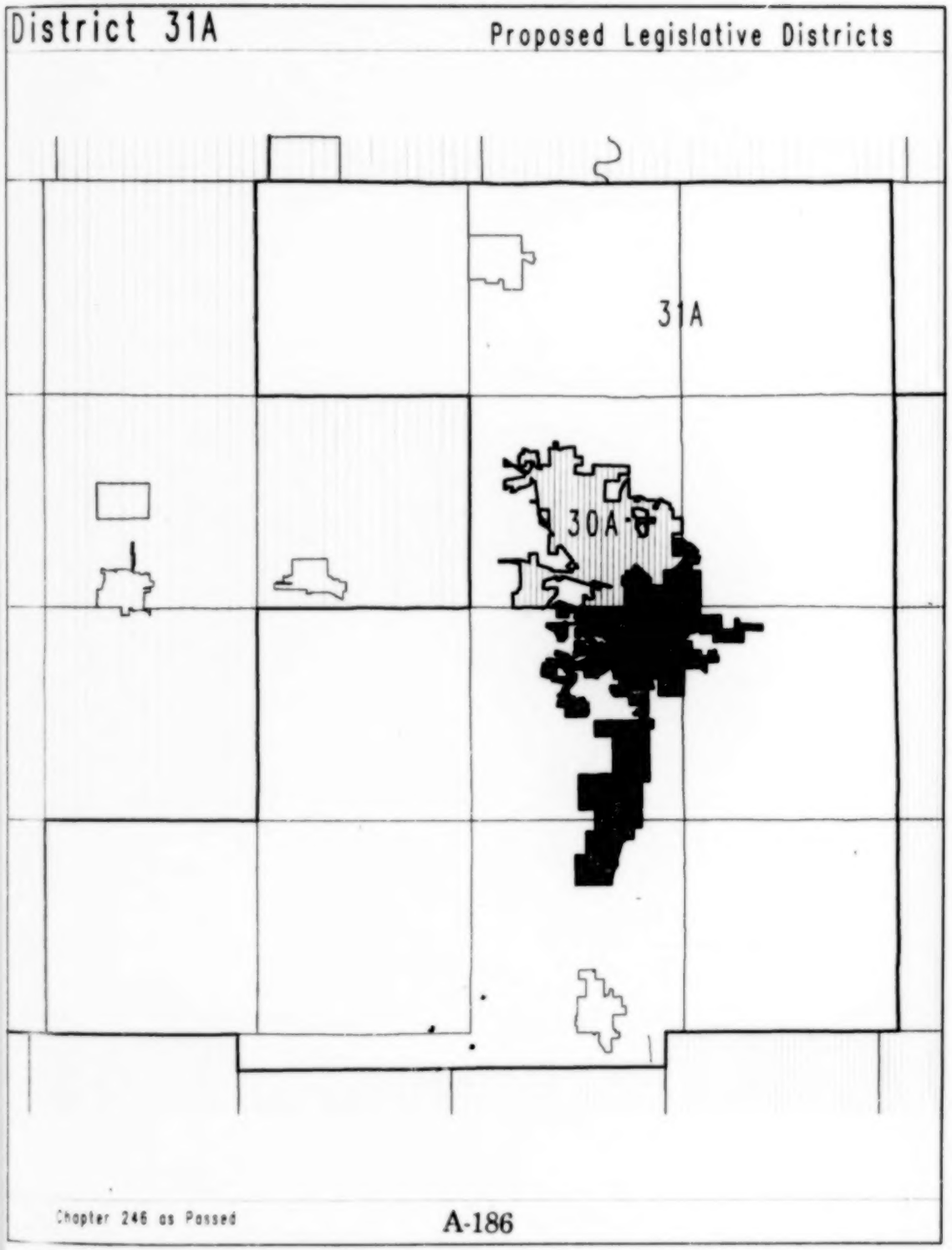


District 24A

Proposed Legislative Districts

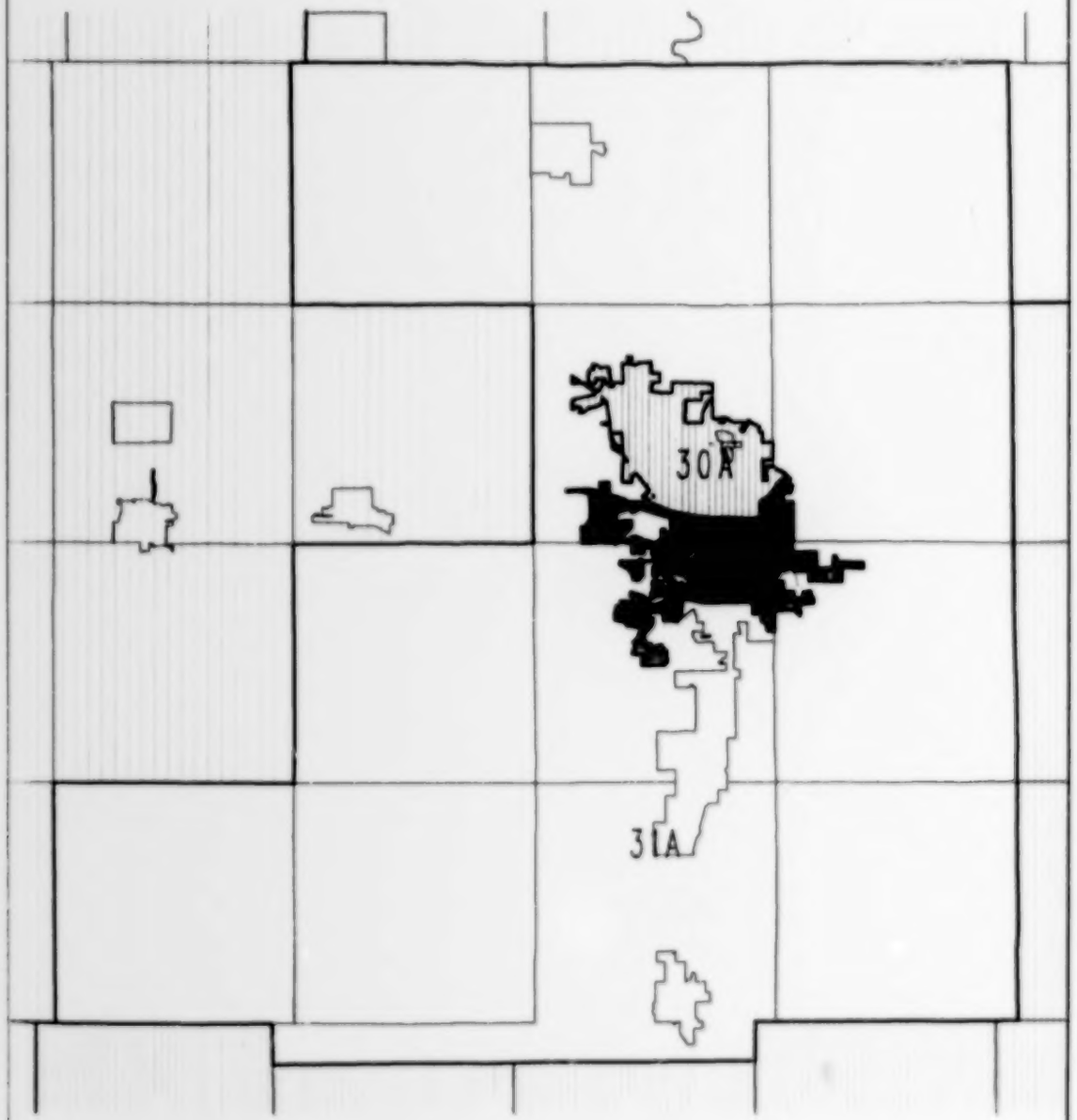


as Amended by the Legislature


District 31A
Proposed Legislative Districts
31A
30A

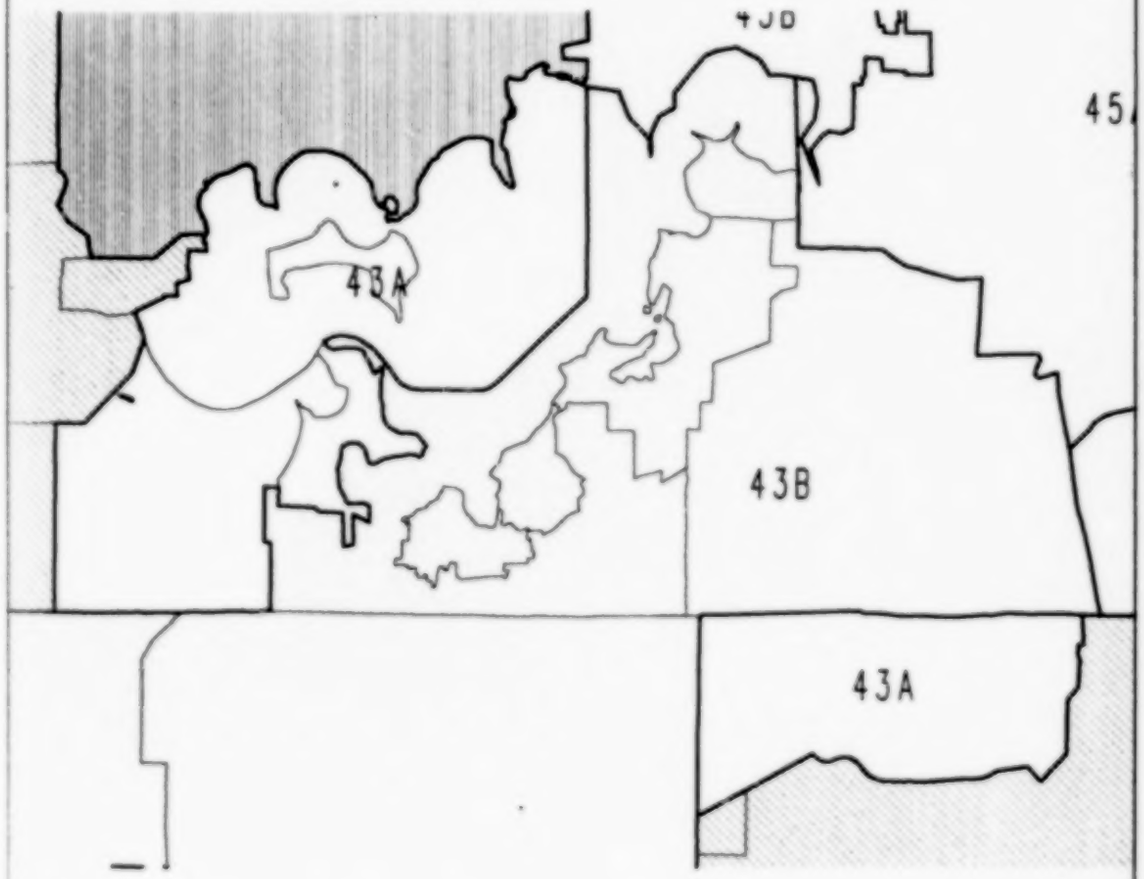
District 31A

Proposed Legislative Districts



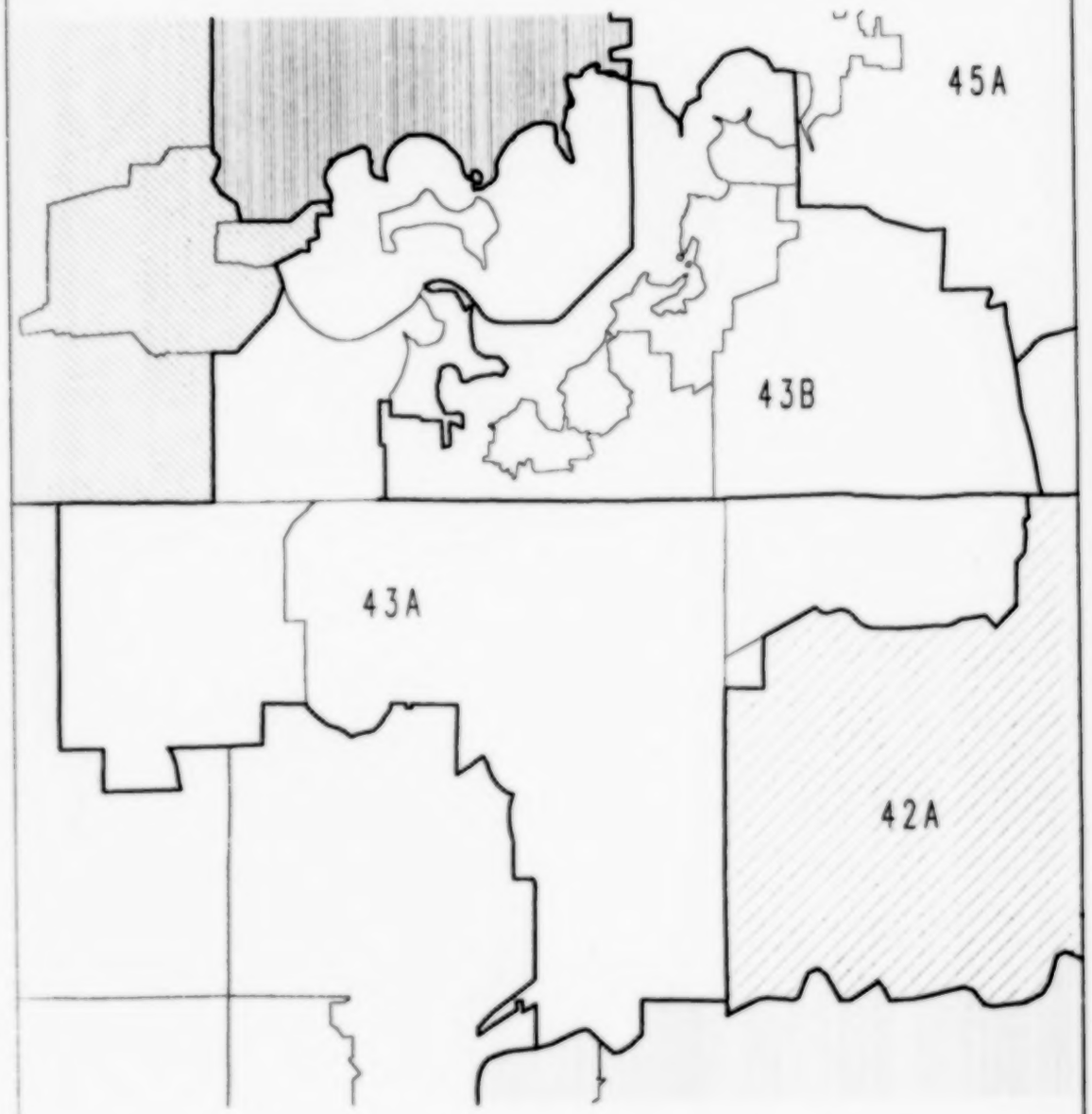
District 43A

Proposed Legislative Districts



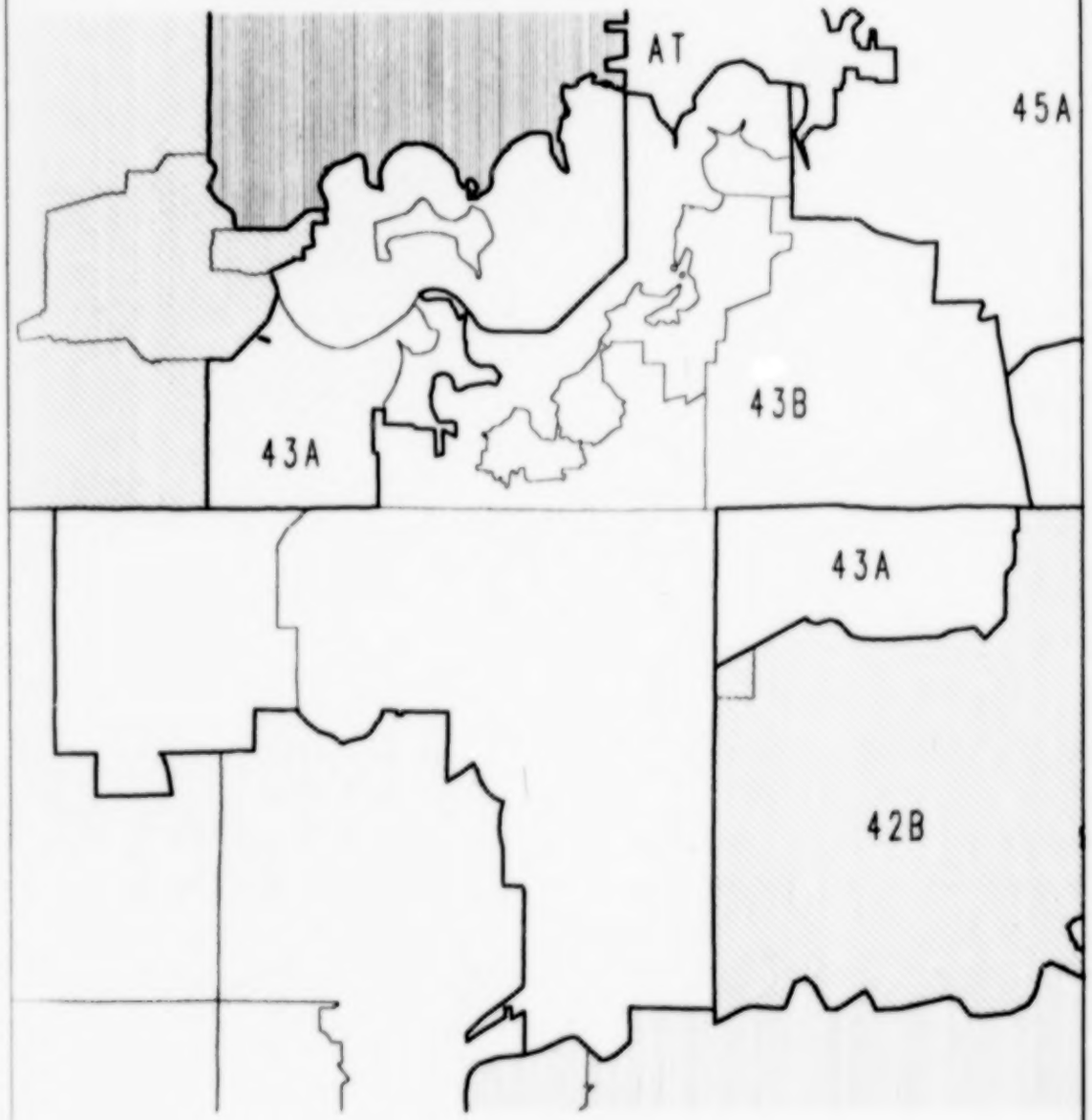
District 43A

Proposed Legislative Districts



District 43B

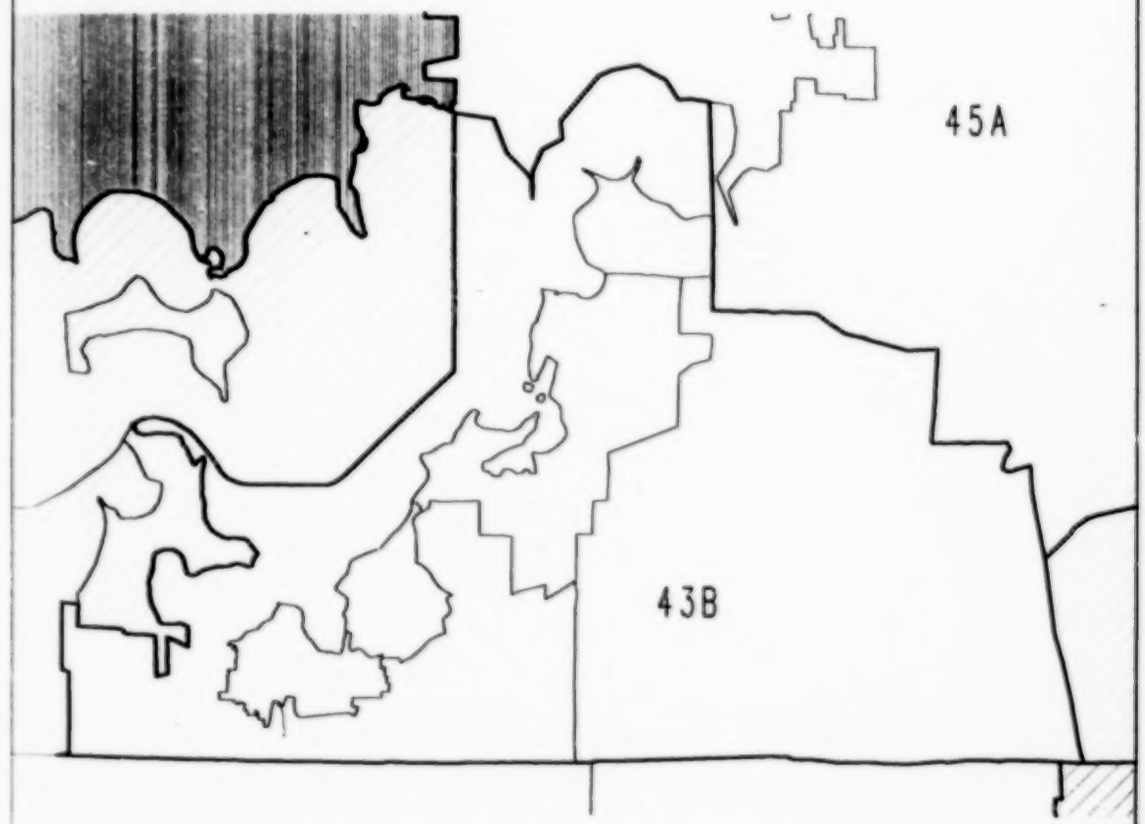
Proposed Legislative Districts



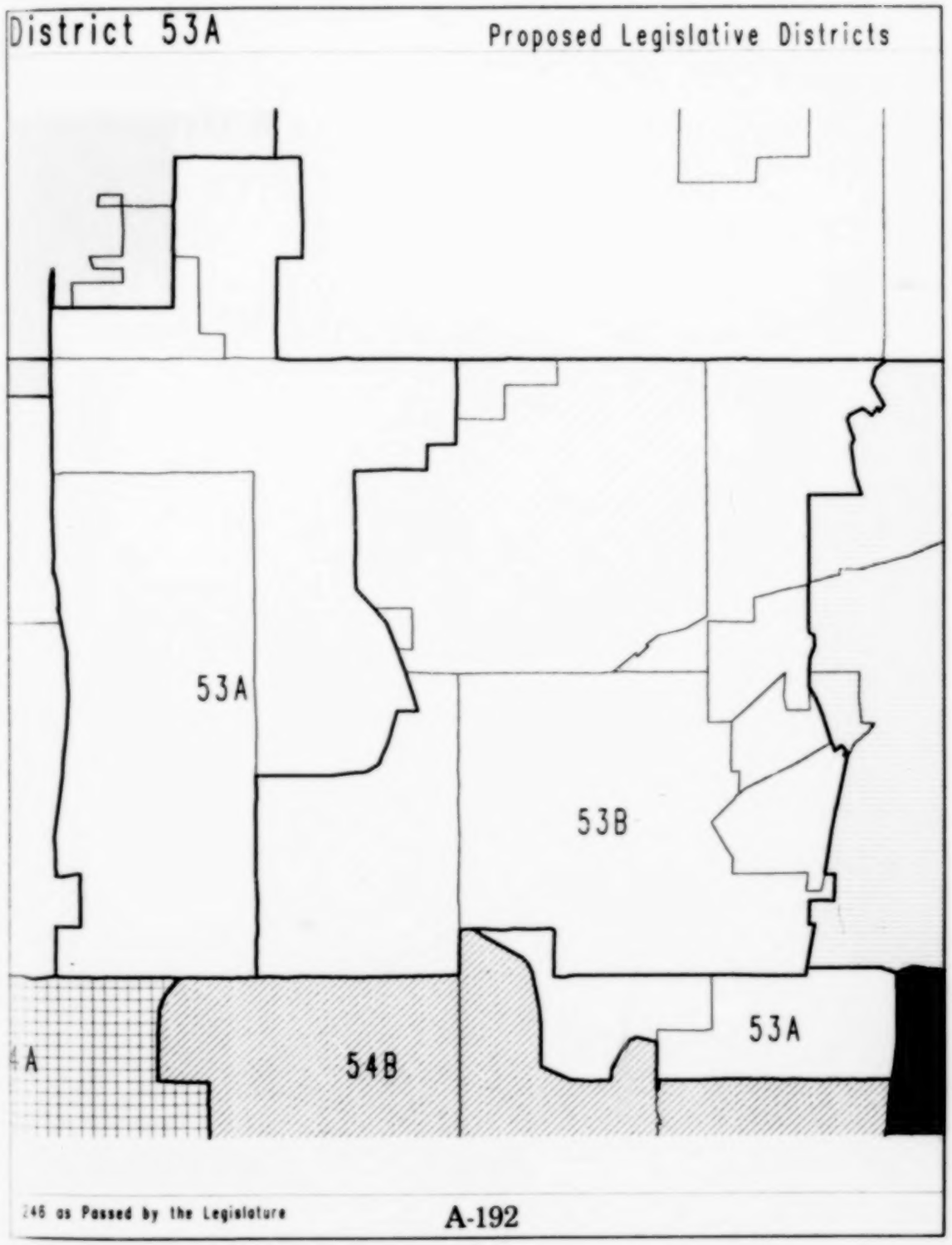
45 as Passed by the Legislature

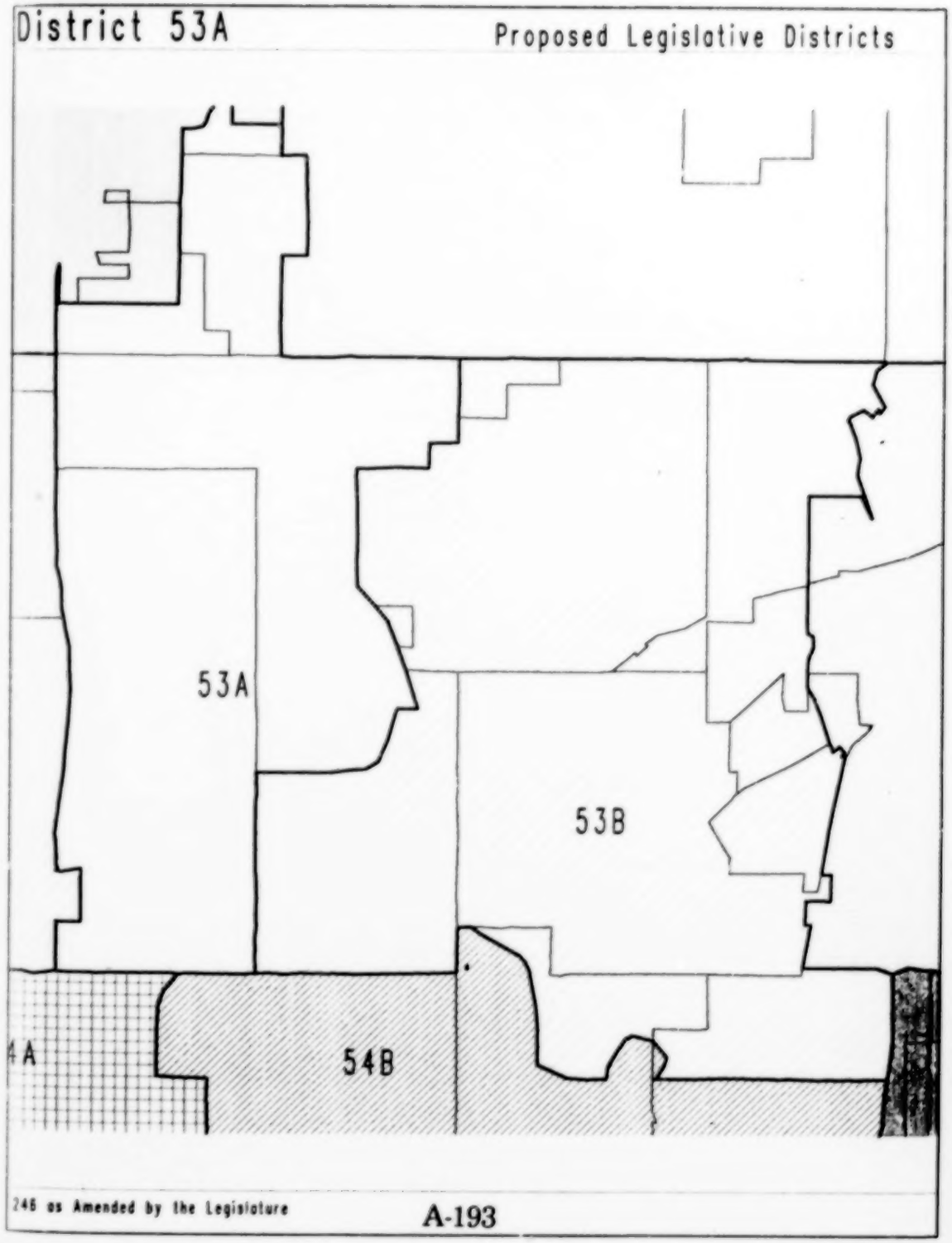
District 43B

Proposed Legislative Districts



245 as Amended by the Legislature


District 53A
Proposed Legislative Districts
53A
53B
54A
54B
53A


District 53A
Proposed Legislative Districts
53A
53B
4A
54B
246 as Amended by the Legislature

District Population Report

District	Total Pop	Abs Dev	% Dev
01A	32,161	-489	-1.50
01B	32,762	112	0.34
02A	32,059	-591	-1.81
02B	32,044	-606	-1.86
03A	31,939	-711	-2.18
03B	33,331	681	2.09
04A	32,312	-338	-1.04
04B	33,121	471	1.44
05A	32,804	154	0.47
05B	32,534	-116	-0.36
06A	32,622	-28	-0.09
06B	32,718	68	0.21
07A	32,092	-558	-1.71
07B	32,225	-425	-1.30
08A	33,193	543	1.66
08B	32,800	150	0.46

District	Total Pop	Abs Dev	% Dev
09A	32,295	-355	-1.09
09B	33,731	1,081	3.31
10A	33,047	397	1.22
10B	33,161	511	1.57
11A	33,249	599	1.83
11B	32,710	60	0.18
12A	33,030	380	1.16
12B	32,058	-592	-1.81
13A	32,397	-253	-0.77
13B	33,110	460	1.41
14A	33,088	438	1.34
14B	32,718	68	0.21
15A	32,614	-36	-0.11
15B	32,431	-219	-0.67
16A	33,067	417	1.28
16B	33,389	739	2.26
17A	33,220	570	1.75
17B	32,574	-76	-0.23
18A	32,300	-350	-1.07
18B	32,246	-404	-1.24
19A	33,041	391	1.20

District	Total Pop	Abs Dev	% Dev
19B	31,994	-656	-2.01
20A	32,987	337	1.03
20B	32,095	-555	-1.70
21A	32,970	320	0.98
21B	33,070	420	1.29
22A	32,411	-239	-0.73
22B	33,037	387	1.19
23A	33,035	385	1.18
23B	32,258	-392	-1.20
24A	33,264	614	1.88
24B	33,046	396	1.21
25A	32,653	3	0.01
25B	32,569	-81	-0.25
26A	32,544	-106	-0.32
26B	33,187	537	1.64
27A	33,060	410	1.26
27B	32,256	-394	-1.21
28A	33,289	639	1.96
28B	32,841	191	0.58
29A	33,178	528	1.62
29B	32,747	97	0.30
30A	37,091	4,441	13.60

District	Total Pop	Abs Dev	% Dev
30B	33,654	1,004	3.08
31A	26,830	-5,820	-17.83
31B	32,622	-28	-0.09
32A	32,545	-105	-0.32
32B	32,847	197	0.60
33A	32,930	280	0.86
33B	32,791	141	0.43
34A	20,365	-12,285	-37.63
34B	44,669	12,019	36.81
35A	32,939	289	0.89
35B	32,763	113	0.35
36A	32,349	-301	-0.92
36B	32,538	-112	-0.34
37A	32,226	-424	-1.30
37B	32,039	-611	-1.87
38A	32,203	-447	-1.37
38B	32,250	-400	-1.23
39A	32,327	-323	-0.99
39B	32,675	25	0.08
40A	32,218	-432	-1.32
40B	32,381	-269	-0.82

District	Total Pop	Abs Dev	% Dev
41A	32,026	-624	-1.91
41B	32,273	-377	-1.15
42A	32,333	-317	-0.97
42B	32,425	-225	-0.69
43A	17,925	-14,725	-45.10
43B	46,836	14,186	43.45
44A	32,445	-205	-0.63
44B	32,658	8	0.02
45A	29,349	-3,301	-10.11
45B	36,129	3,479	10.66
46A	32,111	-539	-1.65
46B	32,809	159	0.49
47A	37,160	4,510	13.81
47B	28,400	-4,250	-13.02
48A	33,014	364	1.11
48B	32,427	-223	-0.68
49A	32,153	-497	-1.52
49B	33,014	364	1.11
50A	32,477	-173	-0.53
50B	32,717	67	0.21
51A	33,350	700	2.14

District	Total Pop	Abs Dev	% Dev
51B	32,810	160	0.49
52A	32,648	-2	-0.01
52B	32,966	316	0.97
53A	36,484	3,834	11.74
53B	28,160	-4,490	-13.75
54A	32,232	-418	-1.28
54B	32,524	-126	-0.39
55A	33,329	679	2.08
55B	33,006	356	1.09
56A	32,411	-239	-0.73
56B	32,316	-334	-1.02
57A	32,438	-212	-0.65
57B	32,034	-616	-1.89
58A	32,333	-317	-0.97
58B	32,315	-335	-1.03
59A	32,699	49	0.15
59B	34,959	2,309	7.07
60A	32,482	-168	-0.51
60B	32,860	210	0.64
61A	30,684	-1,966	-6.02
61B	33,148	498	1.53

District	Total Pop	Abs Dev	% Dev
62A	32,470	-180	-0.55
62B	33,348	698	2.14
63A	32,405	-245	-0.75
63B	32,987	337	1.03
64A	32,412	-238	-0.73
64B	32,682	32	0.10
65A	32,689	39	0.12
65B	32,511	-139	-0.43
66A	32,350	-300	-0.92
66B	32,793	143	0.44
67A	32,904	254	0.78
67B	32,743	93	0.28

Plan Total 4,375,099

Mean Deviation is: 983
Mean Percent Deviation is: 3.01

Largest Positive Deviation is: 14,186 (+43.45%)
Largest Negative Deviation is: -14,725 (-45.10%)

Overall Range : 28,911 (88.55%)

Minnesota Legislature. I did not say that this plan had the NAACP's approval, my point was in raising the issue in the article that the three wards which are smaller than a legislative district overlap the legislative district that we have drawn as the best opportunity to elect blacks to the House and to the Senate. As I said before, I think this is the fact that we can do better for minorities and the fact that we do have an opportunity yet to revisit this issue in some sort of a bipartisan way, we can do a much better job for minorities in terms of increasing their chances of electing members, maybe even better than the amendment that is before us, but certainly better than the plan that we are proposing here this afternoon.

JEFFERSON: Madam Speaker and members, Representative Knickerbocker, the statment you just made is also somewhat in error, that the federal court has shown that if you cannot create a majority of a particular racial minority in a district, than that should no longer be a concern because you do then begin to impact this area and you limit the influence of that particular group and that is what you have done in this particular situation, you have limited the influence of the, in particular, black vote to one Senate seat instead of to the two Senate seats that the proposal that we have already passed, has, and that is a problem. Thank you.

SPEAKER: If I could interrupt the members for just a minute. I would like to make a request and then introduce a couple of guests that we have on the floor. The request is to please ask you to abide by the rules and not cross in front of members when they are speaking to the body. I would like to introduce two gentlemen who are visiting us from the Wisconsin Assembly today, our neighbors to the east of us and they are to the back of the chamber, Representative Peter Barka who represents the district in Kenosha, and Representative Richard Grabschmidt who represents the district in South Milwaukee. Welcome gentlemen.

KNICKERBOCKER: Madam Speaker, members, I'll quote Mr. Davis from the NAACP saying something to the

effect as part of the context of the article about the need for this commission in Minneapolis that is redrawing the wards to stay clear of packing or diluting the minority population in wards if it wants to avoid lawsuits: "The NAACP national office which has studied federal court cases gave the Minneapolis office rough rules of thumb that consider dilution as putting fewer than 40% minority members in a district and consider packing as putting more than 65 to 70% in it. This amendment doesn't pack and it doesn't dilute.

JACOBS: Thank you Madam Speaker. Representative Knickerbocker if you would please go to page 59 of the bill. I am a little familiar with the language that we have on page 59 inasmuch as it is my district. But I would like to point out to you on line 18 if you would. Representative Knickerbocker, it doesn't make much sense. We take 128th Avenue to 129th Avenue, the problem being these avenues are parallel and not perpendicular. Then we go west along 129th Avenue to 129th Lane. This street also is not parallel and not a perpendicular street. Then it goes on in the next language, according to my city engineer is rather confusing, but then when you go down to line 24, I'd like to point out to Pleasure Avenue southwesterly along Pleasure Avenue, the only problem being, Representative Knickerbocker, is we don't have a street in Coon Rapids called Pleasure Avenue. I don't know how we are going to resolve that. And now if there are other problems in this bill similar to the problems that I have in my district, I think the people that drafted this bill drafted it rather hurriedly or something - They did not do a good job in my particular area.

KNICKERBOCKER: Madam Speaker, I don't want to belabor the issue but I think Representative Jacobs missed a mistake on line 9, that should have been north. I think I have more than 156 more to go to catch up to where the court says the bill that was passed last session was unconstitutional.

SPEAKER: Any further discussion, if not we have the Knickerbocker amendment before us. A roll call has been

requested. The clerk will take the roll. The House is under call, members will please vote.

WELLE: Madam Speaker, I move that those not voting be excused from voting.

SPEAKER: Representative Welle moves that those not voting be excused from voting. Those in favor of that motion say aye, those opposed say nay. *MOTION PREVAILS* The clerk will close the roll. There being 58 ayes and 75 nays, the motion does not prevail and the amendment is not adopted. Is there any further discussion of the bill? There are no further amendments at the desk, the clerk will give the bill its third reading.

CLERK: Third reading, Senate File No. 1596.

SPEAKER: Third reading. Further discussion, Representative Knickerbocker.

KNICKERBOCKER: Madam Speaker, members, these comments are directed to the bill in front of us, not the amendment and I think we have to do a couple of different things in the time we have left this afternoon. We have to spend a little time talking about the bill and why it is deficient, but we also have to revisit the whole issue about the process that Representative Welle saw fit to bring up. And in order to do that we have to go back to the timetable of things as to redistricting and what was involved and the fact that we have started off on a bipartisan basis to the LCC setting up the sub-committee to do these things to prepare the Legislature for receipt of the census data and ultimately to do redistricting. That four member committee met, spent time in effect working with State Planning to redo maps to in effect make the maps as accurate as possible based on when we got the census data back so that one would overlay the other and you would be able to account for people. We bought hardware and software for each of the four caucuses. The premise that we were working on is that we would approach legislative redistricting on a bipartisan basis and in essence work the bugs out of the system that we had because we now had hardware and software, and after that had been done, in effect meet and attempt to pass and work out a legislative

redistricting and a congressional reapportionment bill. We would do that through the summer and the fall, hopefully we would hope back in the fall, the Governor would call us back for a one or a two day special session, whatever was necessary, sometime late in the fall, and we would take up legilative redistricting on a bipartisan basis, and congressional redistricting if at all possible at the same time. Or if the agreement was not at hand in October or November of the year, again that was something we could have taken up early in the session when we returned. Of course the normal legislative session. So we were working on this timetable, approaching this issue on a bipartisan basis. And I want to make it clear to all the members that we have approached congressional redistricting, attempting to draw new congressional district boundaries on a bipartisan basis. The same cannot be said for legislative redistricting, one the Democrats decided that they would pass a bill out at the end of the legislative session, even though they had incomplete information and incomplete process and the Minority was in no way in any position to participate or respond because of not having the technical capabilities, and I want to go to that issue a little bit. Because it has absolutely nothing to do with will or interest. The Independent Republicians did have and still do have the will to pass a bipartisan legislative redistricting bill. That's still our goal, to make sure the Legislature exercises its constitutional authority and does the job. And we have the will in the sense that we are willing to make the time, commitment, commitment of energy, to make that happen. And we had that during the course of the Legislative session, we would have had it during the course of the summer, if indeed the DFL were interested in doing legislative redistricting on a bipartisan basis. So we had a timetable, and the first thing that we needed to do after we had the hardware and software, was to hire staff to man the equipment and basically get the system up and running. Because we are all a little bit knowledgeable about computers, but most of us can't do what the system

can so and make full utilization of it. You need a real - someone with technical experience and ability. So on February 15, Representative Rodosovich and myself sent to Speaker Vanasek a memo asking for some sort of a timetable to hire technical staff for legislative redistricting. This was February 15th, and we were told by Larry Bothwell at that particular time, that the timetable for hiring a redistricting person would be the middle of May. So Representative Rodosovich and I sent a memo collectively to Speaker Vanasek saying that timetable was not acceptable, that was too late and that we suggested a new timetable for hiring technical staff people to do legislative redistricting and reapportionment. I can give you those dates...we were looking at April 1st for the position to be filled after it had been drafted as a job position and posted. On February 20th we were told that Todd Johnson had been slated for teh DFL staff for training on the computer and that the DFL will hire Dave Norgaard as their computer expert. And he was completing his master's degree in public administration at Stanford. At the end of February, we were given the deadlines and the dates that the operating training would be held by the hardware manufacturer for the computers. When the macro training would be held and that would be on March 8th and the art info information training on March 22th and 15th. And there is a certain amounts of costs that are incurred in this training program. They were allocated out over the four caucuses, and each of the four caucuses theoretically could send someone to each of these training seminars from the users, the hardward and software vendors. On February 25th in a conversation that our chief of staff had with Larry Bothwell who handles the personnel for the House of Representatives, I don't know the official title, but that is one of Larry's duties, the 2:25 conversation: "Larry persists that we do not need to hire our redistricting person until the middle of May." And we were talking at that particular point of necessity to hire someone sooner because of the fact these training sessions were coming up and it is really kind of necessary to try to

use the opportunity for whoever is going to be involved with the system to be trained on it from the vendors who are goind to supply the hardware and the software. So Mr. Bothwell says to our chief of staff that he would talk with the Speaker about the issue and get back to us. In conversation in the following two days, the end of February, Larry Bothwell confirms that Dave Norgaard is to be the redistricting person but he is working on his masters at Stanford and cannot return to Minnesota until the end of May. Bothwell's rationale for delaying the hiring and continuing to insist on the May 15th hire date is that since the DFL cannot get their person on line until the end of May, we, the IR's, will not be allowed to start a person until that time. Is that plain to everyone? On March 4th, a posting had been drafted and an ad would be run in the newspaper advertising the job. Interviews will be conducted - Madam Speaker, some of the members are saying they are having difficulty hearing - *SPEAKER:* If you wish to hold private conversations, would you please hold them outside of this chamber?

KNICKERBOCKER: Thank you Madam Speaker, I apologize for the length of the discussion here, but it's going on a little longer as long as everyone seems to feel they need a history lesson as to how things evolved and why we are to where we are today. So let me repeat where I left off. February 25, 1991, Mr. Bothwell confirms that Dave Norgaard is to be the redistricting person but he is working on his masters at Stanford and cannot return to Minnesota until the end of May. Mr. Bothwell's rationale for continuing to delay the hire and set May 15th as the hiring date is that the DFL cannot get their person on line until the end of May and we, the IR's would not be allowed to start a person until that time. March 4th, the posting has been drafted and an ad will run in the newspaper this week with the dead-line and so on and interviews will be conducted March 27th and April 5th. On April 5th the personnel committee of the IR House Caucus meets and hires a person or sends an offer to someone to come on staff at the end of May, relying on the May 15th starting

date as indicated by Mr. Bothwell. On the tenth of that month, Larry Bothwell approves our staff's hire and salary. He would not approve the starting date. Comments are since there was no hurry, we could lock in a starting date in the middle of May. We told him that we were making a notation on the calendar for May 15th as had been indicated in previous conversations. On 4-22 we were indicated, told that there was activity on the part of the DFL working on a redistricting plans and Dave Norgaard was seen in the building this week. Administrative Services records show that Dave Norgaard went on the payroll 4-2-91, almost two months before we were told that he would be on staff, thereby giving the reason for the May 15th hiring date, and although we could hire someone in terms of setting a salary schedule, we could not start someone until May 15th, and do you know what day May 15th was? That was the day we had the committee hearing on the redistricting bill. So let me go to the point that in no way did we have technical ability to use the informatin we even had at hand. Do you know how much we have spent on this thing? Probably about $900,000 on redistricting, when everything is completed and totaled in. A work station in one caucus was approximately $60,000 if you add in the wiring and the work station is about $46,376 by itself, another $13,000 for the software - totally we have spent about $425,000 for hardware and software, a plotter and image maker, basically to get the system up and running. Can you imagine that? You would spend $60,000 to give a caucus a machine - hardware and software and yet not hire someone to have the ability to turn it on and to use it to try to analyze census data, analyze plans? The point is in this particular issue, members, we were told we couldn't hire the staff in an early and timely manner to have the ability to use the machines that the state had already paid for and to use the machines that the state had already paid for and to use the information that those machines could generate in the way of analyzing plans. So it wasn't that we wern't interested or not willing or didn't have the will. Remember

we didn't see a plan from the DFL until the day we voted on the bill, the night - two hours before we voted on the bill. We'd invested a tremendous amount of money in the system, probably $900,000 by the time we're done and we weren't going to use it. And not only that, the Majority continued to deny us the opportunity to bring on someone on an early hiring basis as they had done. So is there mistrust on this issue? Yes. Is there some questioning of motives on this issue in the way in which the matter was handled. Yes, but it is with good cause. I'll let you folks make up your own minds as to why things are done and how they evolve. But there is a little bit more history that has to be laid out in terms of this particular bill. We had a hearing on May 15th, we got the bill and two maps and we voted on it that night. We had no opportunity to analyze it other than look at the bill and try to figure out maybe what some of this implications are. The bill was quickly passed out of the legislature that week even though you were warned that it was with error, that it had deficiencies in it, that all of the i's hadn't been dotted, the t's hadn't been cross and there were black holes where you couldn't account for population. There were problems with the legal description, there were a host of things we were not ready as a system to do what was do. Somebody, somebody made a decision to do this, but a funny thing happened along the way. I really believed that this was strategy, a legal strategy that someone had thought about, some staffer or whatever and had recommended that let's pass a bill out of here even though we know it's imperfect, even though we know it doesn't work, even though we know the governor's going to veto it and this will be our starting point. This will be something we can basically go from and I think there are possibilities here that maybe at one point the Democrats were hoping that this is something that maybe the courts would pick up on or could work on through the course of the summer because the governor to veto the bill and I'll bet there are members sitting here that were told, ah, come on vote for this thing, let's get it out of here. I know you are not happy with your district. I

know it does certain things that you don't like but we will fix it. This bill is not going anywhere, the Republicans aren't going to vote for it, the governor's going to veto it, it will be different. Just help us out. Well, suprise you got what you voted for and now you are stuck with those districts. You can't really wiggle out from that and still make all kinds of other kind of claims as to whether or not this is housekeeping or whether this is a different kind of approach to solving the problem or its fair, you're stuck. Because the governor's veto was not upheld, you are stuck from a legal standpoint of trying to defend this bill and the lines that are in effect your legislative districts. Your only hope of making any changes is that there is some sort of legislative bi-partisan working out of a legislative redistricting bill, short what any judges may do. What have we got before us today. This is a new bill, it makes changes in two thirds of the legislative districts in the State of Minnesota. This is no technical bill, it's a new way to solve many of the problems you were told about this the course of the discussion on the bill and since, have been brought to light by different individuals. It's a new bill, no matter what you call it. It's like wrapping up a Christmas package, put a new box in, new toys on the inside, but you use the wrapper it came in and rewrap it and say, na it's the same present, that's this bill. This is a new bill, this is a new way to try to redistrict based on the promises and the mistakes and the unconstitutional problems that you created for yourselves by hurriedly kicking a bill out in the last days of the legislative session. I want to dispel any myth that 246 wasn't unconstitutional. The state court panel where you had hoped to get a rubber stamp for the unconstitutional bill ultimately led to the conclusion and had to make the statement that because of the non-contiguous districts, Minnesota present redistricting law, the 246 which was passed last year, was unconstitutional and they also concluded that it was invalid under the United States Constitution. Rep. Rodosovich in defending this bill, and I quote in the Worthington newspaper, said "this bill will meet any

constitutional test." The state court where you hoped to get a rubber stamp ultimately was even forced to come to the obvious conclusion that the bill was unconstitutional. It had many deficiencies and therefore could not become law. We have no law on redistricting legislative districts. The state court found that there were 160 errors in the bill as passed that needed a remedy. You know, it's hard enough around here to make good decisions as members when we have all the facts, so it just amazes me that why anyone would try to push and rush to a decision something that we have incomplete information about and incomplete access to the technical ability and the capabilities of analyzing your actions before it's all available is beyond me. Like I say, it's tough enough to make good decisions when everybody has all the information, let along not. So we had this hearing on this unconstitutional bill, it was passed out of committee and we asked, as a caucus, for a tape of that particular bill so we could analyze it and we have never gotten a tape of the bill that was passed out of committee on May 15th. We received a tape of corrections from the attorneys involved in the case much later and to the best of my knowledge we have no tape that reflects the changes so that we can analyze the plan that's before us today. The subsequent changes that have been offered in the way of the bill. Members, there have been no negotiations between the Republicans and the Democrats on legislative redistricting. But it has not been because the Republicans have been willing or had the will or the interest or the commitment. Those have been there. The problem was that the Democrats found themselves in a situation of having to uphold a bill that they probably didn't want, but didn't end up being vetoed and they had to play the cards they were dealt, so they decided they would ride that horse through the judicial system in the state court and rely on the state court to uphold what had been done. But an interesting thing has happened. Even though our legislative leadership has written letters to the DFL leadership, other inquiries have been made and contacts have been made. Is there any interest in doing

legislative redistricting? No. The Federal District Court was not happy with the way in which the state court was handling the matter and basically, I have the order in front of me and maybe we will come to that a little later on in the discussion this afternoon. They basically said the state courts action was not only premature, but in affect, had a chilling affect on what the legislature might do and the state court was basically enjoined from substituting its judgments for the legislative action. The federal court wanted to give and I think made it clear in its order, sustaining the state court from doing anything further with this issue, but they were going to take jurisdiction over the matter and that they were going to give the legislature, that's us, an opportunity to address the issue and we've got a very narrow window of time to address the issue. We're back in session this week and next week and maybe the following week and that will be it. But obviously what is going to happen here today that this DFL sponsored bill is going to pass, it will go to the governor's office. The governor will find faults in the bill and veto it accordingly. We have no law, you can't hold, there will be no elections under the bill that is passed out of here today. We have no law in place because the previous one that was passed is unconstitutional. We have a very narrow window of time that collectively Republicans and Democrats could do something in the legislative process to try to arrive at a bi-partisan bill and that has to be done within the next two to three weeks, otherwise that opportunity will be lost to us. The federal court will issue their own plan and many of you may not be happy with the results. It may be much different than anything you have ever anticipated, anything you have ever anticipated in the way of a plan proposed by any Republican or Democrat. Are you willing to take that chance? And I guess that's a question that the DFL, and the majority have to answer. You just search for what you need to do on this particular bill. Are you willing to take the chance on what the federal court might decide or are you willing to try to use the opportunity the federal court has given all of us collect-

ively, saying legislature you work this out. We have assumed jurisdiction and we will promulgate a plan if you don't act. Now passing a bill out of here that has no Republican support and is vetoed by the governor is not acting. Madame Speaker, I would like to say a couple of things about the bill. I think I have laid enough groundwork as it relates to the history and to the process to move on to a few things that I think need to be said about the bill itself. Initially, I want to re-emphasize the fact that this is a new bill. It makes changes in over two thirds of the legislative districts in the state based on what was passed in 246 in the last legislative session. The bill has larger deviations than are necessary. It has more counties that are split than are necessary. One of the things that this bill does is not treat Republicans fairly or not treat areas of the state that have either gained or lost population fairly. This bill matches up more than 40% of the IR women who are legislators in the House, it has 13 pairings in it, 5 of which are Republican against Republican, 4 are DFL against DFL, which include 3 retirees as I understand it and then we've got three matchups with DFLers and IRs, but a strange thing happened, the IRs are in the DFLers old territory and one DFL, IR matchup that maybe could be considered a legitimate contest. So what's the effect of that. Well, the effect of the matchups that are under the bill, remembering that we have 56, 57 members now, would be the IRs would lose 8 incumbents, the Democrats 4, one in question. You may say that's fair, I guest that's a judgment the members will have to make. That's the political side of things. But more over to where those matchups occur and that creates a problem in the logic that's resolved. You know, we've got one IR pairing that unusual, now again that based on the way the law was drafted at the end of the last legislative session and at that time you had Weaver and Schreiber together. Gee, Schreiber district has grown 20, 948 people and Weaver's was 7,803 above the magic number of 32,650 and they were paired. Hansen and McPherson are paired, Rep. Hansen's district has gone up 14,568 people, Rep.

McPherson's has increased in population by 2,371 and then going along that northern tier of suburbs there in Anoka, Ramsey, Rep. Runbeck and Krinkie are together, now these are IR matchups again, Rep. Runbeck's district has increased by 10,558 population. Rep. Krinkie's increased by 8,528 in population, to continue on, with the matchup of Reps. Lynch and Heir again another IR, IR matchup. Rep. Lynch's district had increased 12,382 in population, Rep. Heir's district had increased 9,439. Rep. Hartle and Sviggum were paired up, Rep. Sviggum district changed not more than 56 people in terms of growth. It was really interesting where these matchups occurred. Where you put Republicans against Republicans basically or where you created the matchups, there were all these growth areas as they are across the northern part of the metropolitan area as it came over from Ramsey, Anoka and Washington. That isn't where the population loss occurred. As I said earlier, this is one of the problems you have with this bill. You don't create the districts so that where the population losses occurred, the representation loss also occurred. The average IR district in the last 10 years grew 8.3% to 35,368. The average DFL district over the last 10 years lost 5.8% population to a total of 30,745. Some of those figures are in conflict with what you have drawn in maps and what you have drawn in the way legislative districts for Republicans. As I told you earlier, if you don't make the areas that lose the representation lose the population, you create a big ripple effect. If you drew that line across northern Minnesota, where there had been substantial population loss, you should have 16 House seats. Under the DFL plan you've got 18. Northern Minnesota continues to be over-represented by 2 House members and a senator. What happens is, because you don't recognize those losses in the area that took the loss, you run all those fingers down, the folks in central Minnesota end up losing legislators or losing territory, not because they lost population percentage wise as much as the folks above them, but because you'll continue to let ripple down and ripple down and ripple down and the

same thing is true along the border and the southwest corner of the state. As I said, you ripple the population loss so that you didn't have to match up the incumbents in the districts that lost the population in the southwest corner all the way up to Montevideo and all the way over to Mankato. In the metropolitan districts, if you want to look at the metropolitan area as a whole, based on the amount of population, there should be 70 districts within the 7 county metropolitan area and 64 outside of it, one district should straddle the line; split the population. Under the DFL plan you have 65 districts within the 7 county metropolitan area and the other 5 have fingers that run outside of the 7 county metropolitan area. The IR plan, the amendment that you voted down would have had 69, closer reflecting the population split between the metropolitan area and outside Minnesota. Now maybe that's not so important to you members here, but those are kinds of issues that judges are going to look it and they are going to look to see, was this a fair plan as in terms of how it treated the minority. Did the minority have any input, was the minority given opportunities in a meaningful way to have impact on what was decided and when it was decided and whether or not the districts that are drawn reflect accurately what's happened in the shift in the state's population in the last ten years. You voted against an amendment which would have recognized all of those concerns when you didn't support my amendment. You are going to have to think about the jeopardy that you are placing yourselves and the legislative districts you hope to have under this bill in, because there are a number of significant deficiencies in this particular bill that judges are going to be interested in seeing. Is there a better way to address the problem, is there a better way to drawn legislative districts that are fair, more accurately reflect where the population shifts have occurred. I think for those reasons members, you ought to vote against this particular bill. I would ask a no vote at this particular time and if indeed, there is the opportunity to speak again on this issue I would like to do Madame Speaker.

OLSEN: Thank you Madam Speaker. Madam Speaker and members, I too am a member of the redistricting committee and I believe that Rep. Knickerbocker has set forth many things that relate to negotiations and the process. I would like to talk to a little bit about my view of what happened in the committee process. We began with a meeting on January 15 at which time the minutes relfect, according to the chairman that each member would be assigned certain areas of responsibility. I can tell you that as a member of that committee I was not assigned specific responsibilities, although I eagerly awaited those responsibilities. Rep. Knickerbocker was not the one at that particular moment who was assigning responsibility to Republican members. We met again on Tuesday, January 29 and heard from the state demographers and others about redistricting matters. Our third through out eighth meetings took place from February 19 through March there were meetings around the state, in Rochester, Duluth, Willmar, Stearns County Courthouse in St. Cloud, there were meetings here in the Twin Cities as well to hear from individuals as to what it was they felt ought to be part of the redistricting bill. Then as we got to meeting number nine which was on March 19, we begin considering standards for redistricting which were passed by the House and Senate as concurrent resolutions. On March 20th, we looked at a bill that related to elections and redistricting goals and deadlines. Then on April 9th, we begin hearing a bill which I believe was Rep. Knickerbocker's that considered whether or not we ought to be doing something that related to county and city redistricting plans. We considered that on April 9th, we considered it again on April 12th, we further considered it on April 19th, we considered it on April 23rd, and that brought us to the infamous date of May 15th. All of a sudden on May 15th, we had H.F. 1699, which later became H.F. 246. We had a little difficulty with approving the minutes of that meeting in our committee because several of us from both sides of the aisle recall that roll call votes were taken on H.F. 1699. They are not relfected in

the minutes, but interestingly enough there is no tape, there is no recording of that meeting, so we cannot go back and review the tape to find out, in fact, whether those of us who recollect that a role call was taken can verify it. We find that a very interesting situtation. Then, as you know, the legislature passed that bill and on June 6th, the chairman of the committee sent a notice to all members of the redistricting committee asking us about congressional and metropolitan council redistricting plans. He asked us to fill out a form to let him know whether or not, what the level of our interest was, and whether we wanted to be involved. On June 13th, I replied in a letter to the chairman that I wanted to assure him that I was vitally interested in the interim work during the summer of this committee on any and all redistricting plans, congressional legislative or Metropolitan Council plan. That I wished to be informed of meetings, and to participate fully as I believed all members of our caucus would and I also said that I felt that our causus wanted to be working on both the legislative and congressional redistricting during the summer of 1991. That letter was dated June 13th. On August 9th, I again wrote to the chair of the committee indicating that I had not had a response and two months had past and no committee meetings had been scheduled. I also pointed out to the chair that in pleadings filed in the redistricting cases by John French in the Federal District Court, he indicated in his pleadings that a redistricting committee had been scheduled to meet in September and I felt it was only fair that I was a member and our caucus members ought to have been informed of this committee schedule certainly at the same time, if not before, Mr. French knew about this. I felt it was unfortunate that I had to read the pleadings to find out about that future schedule. We then met on August 26 and at that time the chair brought forth some amendments that related to some technical corrections and we questioned the chair at that particular time at to whether the purpose of that meeting was to provide ammunition or information for the court cases and obviously the subsequent pleadings

and memos and memoranda that were filed in that court case proved our suspicions to be true. That particular bill was voted on and every member of our caucus, plus a member of the majority caucus voted against that bill that was provided for a technical correction bill. There then was a meeting September 12 and at that Sept. 12 meeting, the chair of the committee simply presented for the first time proposals, I'm sorry he presented those on August 26th, the DFL proposals for the congressional redistricting plan. On Sept. 12, Rep. Knickerbocker presented the House IR caucus congressional redistricting plans. On Oct. 30, we had an opportunity to vote on the proposed congressional redistricting bill and again our caucus voted against it. There were no Republican votes for that bill. On Dec. 16th, I sent a letter to the chair of the committee indicating to him that it was my understanding of a federal court order on Dec. 5th that the court had hoped that we would work together in the sense of compromise and cooperation to come forward with a bill. The chair responded to me on Dec. 20th, that he had reviewed the Federal court order and did not feel there were any guide lines or suggestions in that bill that we ought to be doing that and asked me if I would like to discuss the matter further with him. We then met on this past Tuesday, January 7th and passed the bill which is now before you. I think that his whole process has been a problem for us as Republicans. The federal court order on Dec. 5 said that the integrity of the legislative process must be protected. The history of excluding the Republicans from this process shows that in fact, the majority party has not protected the integrity of the process nor has it protected the rights of the minority in that process. Furthermore I believe that the citizens of this state ought to be outraged at the unfairness of the process. If you take the 56 Republican members of the House and multiply it times the number of people we represent I would suggest that nearly two million people in the state have been disenfranchised because their representatives have been excluded from this process. I believe that this

whole legislative redistricting matter, this whole process, has been an exercise in private policy making as opposed to public policy making. Instead of having a government that is "we the people", we have a government of "we the politicians" who are controlling this legislature. I urge you to vote against this plan.

(Introduction of former representatives)

BLATZ: Members I would just like to point out two flaws after goind through the plan myself. There are two things that concern me, one is more of a local nature. It deals with the issue of adequate representation of communities of interest, in this case Bloomington. The second issue is what the DFL plan does to women, independent Republican women. On the first issue, why I think the court frowns on city splitting and I think by and large we try not to split cities is because they are truly communities of interest. In my particular city we have things such as air ports, megamalls and transportation issues in particular that our people are concerned about. What the plan does is give us 6 legislators, yet out of the 6 legislators, only 1 has the district that is contained in the city of 86,000 people. What I term our sister city. Duluth, because we are similar in size, although our party preferences tend to be more Republican in Bloomington and DFL in Duluth. Duluth is approximately 80,000 people and out of their legislators they have 3 that will be representing Duluth as it should be, I think that's the correct thing to do. It does bother me that the way the plan will result if in fact the courts would adopt it that Bloomington, the third largest city in our state will have one legislator whose district is solely contained in the city. On the other score dealing with Republican women, the statistics that I have here that four of the 11 Republican women were matched up which is 38%. This is to be contrasted with the DFL women matchup which was 6% which I think is great that it is low. And the men, both parties, are matched up at the rate of 18%. It's one thing to talk about the need for diversity. We also have to create opportunity. And it does bother me that 38% of my Republican women colleagues have been

matched up and three out of four of those, or 75% of those districts, were districts that Representative Knickerbocker mentioned, increased at a greater rate than the statewide average. So really, truly, it was kind of creative artistry I think that came up with the result because usually you do matchups when there has been a loss of population and not an increase. So for those two reasons I am concerns about the bill as it is before us and I will not be supporting it.

DEMPSEY: Thank you Madam Speaker, members. I am going to make this short, but I think it is important. You know, make no mistake, this is a new bill. The bill that we passed out of here the other day was so bad that the attorney that was hired and paid for by tax money went into the state court and admitted that it was unconstitutional. Now let me tell you when something is that bad, it's hard to correct it. So this is not a correction. This is a new start because the old start was done so badly. Let me secondly say that it is too bad that the people who are so interested in the Knickerbocker amendment hadn't taken the same time to read the bill that was passed out of here before, you'd have found equally a high number of errors and you could have been as critical of Representative Rodosovich's bill as you were of Knickerbocker's bill. So I think it is very clear that what you have here is an attempt to try and say that this bill is somehow a correction. You can't correct that which doesn't exist. And what doesn't exist today is a bill in the state of Minnesota that redistricts us. It just doesn't exist because it is unconstitutional. The strong language of the state court in finding that it not only violated the state constitution but also the federal constitution I think ought to indicate to you how poorly drafted and how poorly conceived that bill really was. So I'd like to tell you at this point in time why should you vote against this bill? Because I think we're all better off if the legislature does its job and is doesn't leave this redistricting problem to the courts. Because as sure as I am standing here today after you pass this bill which you may very well do because you

have the numbers necessary to do it, we still are not going to have a redistricting bill in the state of Minnesota. The Governor has looked as what you have put together and I think he is familiar enough with it and I think I am going to tell him along with most of my colleagues that he ought to veto it. Maybe we ought to get this debate done quick enough so we can have that veto on the 6 p.m. news because that's about how long it is going to take him to find out that this bill is flawed.

SPEAKER: Representative Abrams.

ABRAMS: Thank you Madam Speaker. I am not going to repeat what Representatives Knickerbocker, Olsen, Blatz and Dempsey said, but I am suprised that we are going to be here today to take a meaningful vote on redistricting. And the reason that I say that is that the DFL machine has done everything in its power to make this vote today meaningless. The Legislature, the Majority party of the Legislature, hired a chap by the name of John French, supposedly to represent legislative interests in redistricting. And while he was telling the federal district panel to defer to legislative action, he was standing before the state court panel less than a week later saying that they should act now. Correct Chapter 246 and correct all the flaws. Argued opposite positions to opposite panels and it was only because of the genius of our system, the genius of a federal system and separation of powers that a federal court, protecting federally guaranteed constitutional rights, stepped in and said, this isn't right. The courts are supposed to defer to the Legislature, that's what the Germano case is all about, state and federal courts are supposed to defer to the legislative process. And the legislative process is not just what the House and the Senate does, it's what the Governor does. if we are talking about legislative intent, as Mr. Rodosovich did prior, legislative intent is that the Governor meant to veto this bill. Now we didn't have a district census unit report back in May. I asked you. Mr. Rosodovich, at the committee hearing, to provide a city split report. I didn't get it until August on the corrections bill. We asked you for a copy of a

magnetic tape that would have a copy of Chapter 246 on it, we didn't get it until August. But there is one piece of evidence, or two pieces of evidence, that we have, Mr. Rosodovich and other members. And that's the district population summaries that were passed out on the House and Senate floor by Representative Rosodovich and Senator Pogemiller, as well as the text of Chapter 246. And the difference between Chapter 246 and this bill here today members is that there are population changes in 63 of 134 House districts and 25 of 67 Senate Districts. There are geography changes in 87 of 134 House Districts and 40 of 67 Senate Districts. Now I have heard in talking with a number of people on both sides of the aisle that, well and 40 of 67 Senate Districts an the bill was changed in 99 of 134 House Districts and 45 of 67 Senate Districts.

Now I have heard in talking with a number of people on both sides of the aisle that, well what the federal panel is going to do is simply take the corrections bill, take what would happen back in May, take what the State Court panel does and do something pretty close to it. Well let me tell you, members, that very well may happen, but there is precedence to the other side, strong precedence from the United States Supreme Court. One of the cases that we discussed in Rep. Rosodovich's committee, a case called Karcher. It was a congressional redistricting case that went up to the Supreme Court and stands fo the proposition that absent the compelling state interest to the contrary, congressional districts must be of nearly equal population as practicable. But that doesn't tell the whole story. The whole story is that case went back down to a 3 judge federal panel and let me read from the decision of the United States Supreme Court. In Karcher v. Daggett we held that the reapportionment plan which had been adopted by New Jersey after the 1980 census was unconstitutional. On remand, the 3 parties by stipulation asked the 3 judge District Court to select which of a number of proposed redistricting plans should be employed in place of the plan which had been adjudicated unconstitutional. Sound familiar so far. The district court

rejected the "Senate Plan" and selected the "Forsythe Plan." The District Court chose the Forsythe Plan because it achieved lower population deviations and more compact districts than the Senate plan. The appellants claimed that the District Court was obliged to accept the Senate plan because it most closely conformed to the Senate's original plan while eliminating unconstitutional population variances. Sound familiar?

They have accordingly filed an application for a stay of the District Court's Order as well as an appeal since there currently is no apportionment plan in effect in New Jersey and elections are imminent, what appellants are really seeking is an injunction from this court ordering use of the Senate plan pending disposition of the appeal. Once a constitutional violation has been found, a District Court has broad discretion to fashion an appropriate remedy citing cases. I do not believe that there is sufficient likelihood that the District Court abused that discretion by selecting the Forsythe Plan to justify the relief appellants seek. Because the Forsythe Plan contained lower population variances, it more completely redressed the constitutional violation.

What I am saying in English, members, and to translate that, is that it very well may happen that the three judge federal panel may take 246 and just clean it up and pass it out. That's what you have probably been told by your lawyers, that's what you have probably been told by your leadership. What I am telling you is that there is ample authority from the Supreme Court on a six to three decision for the Federal Court to exercise broad discretion about what it does and look at things like deviations of population, treatment of women and all the other issues that we have brought forward today to show that this is a blatantly unfair plan. We are in what I would consider to be a very difficult legislative session and there is going to be very difficult times ahead of us. One of the books that I read as a child in grade school which greatly impressed me and that I recently went back to because of some of the stories that are contained in it is a book written by John F.

Kennedy called *Profiles In Courage*. And one of the stories that President Kennedy talks about is that of Senator Edmund G. Ross and a group of six other radical Republicans during reconstruction that voted against the conviction of President Andrew Johnson as a matter of principle. One of the Senators who was involved was Senator James W. Grimes of Iowa who was dying at the time and had to be carried into the Chamber literally on a stretcher. And he voted against his party. He did the right thing. He followed his conscience. And here is what President Kennedy wrote. And it's not only applicable to redistricting, but Madam Speaker, I would maintain that it is important to a very large amount of what we are going to be doing. "I shall ever thank God that in that troubled hour of trial when many privately confessed that they had sacrificed their judgment and their conscience at the behest of party newspapers and party hate, I had the courage to be true to my oath and my conscience. Perhaps I did wrong not to commit perjury by order of a party but I cannot see it that way. I became a judge acting on my own responsibility and accountability only accountable to my own conscience and my Maker and not power could force me to decide on such a case contrary to my convictions whether that party was composed of my friends or my enemies." Members, the vote we are about to take is an important vote. Maybe it deals with the redistricting issue, but there are going to be other very important votes that we are going to be taking later this year in which I hope that we are able to put our party affiliation aside and do the right thing for the state of Minnesota. But I must tell you that a large number of people on your side of the aisle have come to me and told me that the procedures used in the redistricting committee were unfair and unjust to the minority. That the procedures being used here, and that this bill is an unfair bill. All I can do is plead with you and beseech you to vote no and also tell you that we do have a window of opportunity because the Federal Court will not be conducting another hearing until February 4. And if Representative Dempsey is correct that the

Governor is going to send that bill back to us and we will sustain that veto, make no mistake about it, we will sustain that veto, we still will have three weeks to sit down and work out a compromise. And Representative Welle, if you think that Republicans are lazy and uncooperative and unwilling to work, let me assure you that if instead of rejecting our offers to negotiate or putting off our offers to negotiate or saying anything else, when this veto comes back and if it's upheld, we are willing to sit down with you the next day in order to pass a fair bipartisan redistricting plan for all the people of Minnesota.

SPEAKER: Representative Newinski.

NEWINSKI: Thank you Madam Speaker. I along with Representative Abrams want to thank the Speaker for allowing us to discuss this issue, to digest it, to maybe regurgitate it. In January of 1991 Representative Knickerbocker spoke to the IR Caucus and explained to us exactly what was going to take place with the redistricting, that we were going to work together, and with a timetable we were going to be set up where we'd be voting for a proposal in October or sometime in the fall we were going to come in for one day and vote for the redistricting plan. And if I might borrow words from Rep. Lourey, I might say that I am disenchanted with the process. One of the things that I have to stand up and speak about is with regards to my district. My district, if you'll open up your green book to page, the legislative districts in the metro area. My district is 55B. That district at the present time was rectangular in shape and was within the percentage points of being correct. Now somehow they took this district here, they found out where I lived, and they found out where Rep. O'Connor lived. Now if you look at that district, I'm up in the very northern party of that district, that's district 55B in case anyone needs to find it. Rep. O'Connor is down in a lower part down there. To me, it seems like they went out of their way to put us together, and being a freshman legislator, I would suspect that I am vulnerable, but I am beginning to like this place and I like a lot of the people that are here. I didn't really want to

leave yet. The real crux of the problem is, I ran in 1988 and 1990 is when I won. In the election of 1988 and the election of 1990, my campaign manager happened to be a person by the name of Bob O'Connor who happens to be the uncle of Rep. O'Connor, Rich O'Connor. Now this is the problem. His uncle living in my district, I running against Rep. O'Connor, the family is torn. They don't know who to vote for. This is adding stress and pressure on that family unit and as a freshman legislator, I might add that I am looking for the elevator, I've got the shaft. You know, we were talking about, Rep. Knickerbocker was talking about the idea of how it was set up in the beginning, that we were going to bargain in good faith and me being a union member, we sit down with businesses and bargain in good faith to get a contract that is good for the people. We don't sit down at the table, us union members do not sit down at the table by ourselves. No negotiation is possible. In like manner, the proposal that we have before us, this bill that we have before us, was negotiated by one side. Now I've done some work, and I've lobbied Rep. O'Connor and I got him to join me in voting against this bill. Now we need a few more votes, so I'm asking you to help out the O'Connor family, my family and joining with Rep. O'Connor and myself in voting down this bill. This is a bipartisan support of the defeat of a bill. How can you go wrong? Thank you for your support.

SPEAKER: Any further discussion? Rep. Rosodovich.

RODOSOVICH: Thank you Madam Chair. We've had a lot of court cases and opinions and selections out of statutes and court orders and, I probably should also make a couple from Pre-trial Order #4 just for those people who are worried about Chapter 246 and in Pre-trial Order in the State Court, it says that case law compels us to adhere as closely as possible to the intent of the legislature as embodied in the redistricting legislation. And they cite the case of White in the citation. Pre-trial Order #5. Because we've heard so much about defects and corrections, the State Court says the defects are not so persuasive as to abridge the overarching requirement of

judicial deference to legislative policy decisions. The panel further went on and said "This panel is obliged to affirm those portions of the law that meet constitutional and statutory requirements and to limit the scope of its remedy to those areas in which substantial defects are present." Since people are offering court orders, I'm not an attorney, so, Mr. Abrams and others, feel free to correct me if you choose, but in the dissenting opinion from the Federal Court, because we've heard a lot about that too these days, and I thought this was the legislature and that the Judicial building was across the street. But just in case we think we are, the dissenting opinion said "In addition, the November 21, 1991 order issued by the State Court seems completely appropriate, both as to the law and as to the reapportionment plan." Clearly Chapter 246 represents state policy which in my judgment must be the cornerstone of any new reapportionment plan. Okay, then we have a U.S. Supreme Court appeal and in one of the cases there, Scott v. Germano for those people that understand what all these things mean, they say that the power of the judiciary of a state to require valid reapportionment or to formulate a valid redistricting plan has not only been recognized by this court, but appropriate actions by the states in such cases has been specifically encouraged. Now let me set a couple other things straight and I have been real quiet and I have listened, just like I have done for the last 11 months. And anybody can take any shot you'd like at me and I have listened to those and now what I want to go is point out a couple errors that were made. First of all I don't ever remember us mentioning names of staff members on the floor in our discussion or debate. But since we have, and since our staff member was supposedly part of Stanford, I don't know if it just an error or what the case may be, but it leads me to believe that if we can't get the right school right, I just want the record to note that it's Berkeley. O.K. So we've got than on record. Not Stanford, since we've mentioned those folks, just so we have that. But we talk about the posted positions for staff people. You know what? I said I don't think we ought

to have to hire anybody until May. And Representative Knickerbocker and I sat and we met and we said no, we determined it would have to be earlier and probably April 1. So we did a posting. We did a joint posting for both positions. We did a joint ad for both positions. Just to set the record a little straight. People have gone through the schedule. I did that in May. I went through each date. Thank you for reviewing that for us today. But you missed a couple of meetings. One on April 23rd with the Minority Leader, the Majority Leader, the Speaker, Representative Knickerbocker and myself, after we had word that the census data was going to be here much earlier than we anticipated, and Representative Vanasek and Representative Long's direction to us was that if we could do the bill by the end of the session we ought to do it. And you know what, every outstate hearing we had whether it was the League of Women Voters or the election officials or the public, said whatever you do, don't wait until the last minute. And so what did we do, we passed the bill. To negotiate and cooperate it takes two - it takes two. I have spent 12 months working on this process and many of the committee members and staff have spent the same. Our goal when we looked at districts was not incumbent protection, members, that we are discussing individual districts and how it impacts us or affects us, wasn't incumbent protection. The first thing we did when we looked at the map was to cite the minority districts because we wanted people of color to have the opportunity to be represented here. And we didn't put the members in this chamber or the members in the Senate in different districts if they were people of color or pair them and then come back and say that we have done great things for minorities in this state. The Minority Leader stated that on the day that we considered the bill people were showing errors. You know why they were showing errors? Because we sent a memo from our offices asking for everybody to look at their district and help us make sure we had corrected all the errors. And for the last seven months the election officials, people in the community, all of those

people, have looked, have read -- and that's what we are talking about today. We're not talking about a new bill. We' talking about corrections to a law. That's what we are talking about today. And if people are so concerned about the judicial process and that this is going to take us right into the spring of the year and we won't know where our districts are, well today I am telling you the Legislature has acted and will act. People told me when I took my position, the Legislature won't respond. They won't do it. They haven't done it for awhile. Well we're doing it and by all records, majority still rules. And this bill will be delivered to the Governor. I want the record to show that the Legislature has acted and if the Governor decides to veto a technical correction to make an existing law better so that we can have a law that doesn't work as well as if we passed this technical correction bill, then so be it. But be it on his head and not ours. Another remark was made regarding the census data that came much earlier than we thought. And in every remark that I made from January 1 through the time that we passed this bill on this floor in May, I said we would do the bill at the earliest possible date that we could do it. On May 15 we passed technical corrections or introduced a committee bill in August. It's been in the public. People have looked at it. The court has looked at it. So don't look to us because we acted. And we acted in good faith because I told you we're going to do it. We're going to act. Members I encourage your vote on this very important issue.

SPEAKER: Representative Abrams.

ABRAMS: Well, Madam Speaker and members, I had not intended to speak again. But Mr. Rosodovich saw fit to read from the State Court Order and from the dissenting opinion by the federal court panel. Let me read to you part of the federal court order that has shut down the state court panel. "We view the action of the state panel as being in direct violation of federal law and interfering with the continuing jurisdiction of the state court. On this basis with great reluctance, deference and concern, we now issue an order necessary in aid of our jurisdiction

enjoining further issuance of the state court plan and staying the effective date thereof until further order of this court. We are fully cognizant of the heavy responsibility we face in our decision to issue this order. We have determined that the state of Minnesota, its people, the Legislature and the Governor must be protected from confusing and possibly conflicting orders of a state and federal court. We deem it highly improvident that the state court has proposed a plan of its own before the Legislature has a full and complete opportunity to act. Such a plan, if allowed to stand, clearly contains an intimidating message to the Legislature and the Governor. There can be no disagreement that the legislative process should be allowed to proceed unrestricted and free from judicial influence. The integrity of the legislative process must be protected. A court adopted plan issued prior to the legislative act inhibits the legislative process. That's what Mr. Rosodovich didn't tell you. And what also he didn't tell you is that it is possible that the federal panel will take 246 and it is also possible under the Karcher decision that I explained to you earlier that they could do something entirely different. What I am pleading with you for, what I am beseeching yo [sic] for, is negotiations so that we can have the legislative process which includes the Governor's signature, ended in a fair, bipartisan redistricting plan for all the people of Minnesota.

POLSBY INDICES

Federal Court Congressional Plan

	Area	Perimeter	Compactness	Avg. Compactness
1	24837520000	786808.50	0.5039178973	
2	42783420000	1113168.00	0.4336543537	
3	1617588000	260900.50	0.2984748434	
4	586630500	139023.70	0.3812208040	
5	280911700	90871.44	0.4277272210	
6	281328800	391384.30	0.2306731426	
7	73133084111	1793333.00	0.2856154179	
8	79064200000	1693381.00	0.3463061109	0.3633918475

SF 1597

	Area	Perimeter	Compactness	Avg. Compactness
1	22686380000	754690.60	0.5002843994	
2	52058790000	1242684.00	0.4234111551	
3	1448509000	292311.10	0.2129218460	
4	52731.3600	105708.10	0.5927097591	
5	316063600	104321.20	0.3647698829	
6	2922326000	403101.20	0.2258864184	
7	68305850000	1898993.00	0.2379034893	
8	76851410000	1733490.00	0.3212172044	0.3598880193

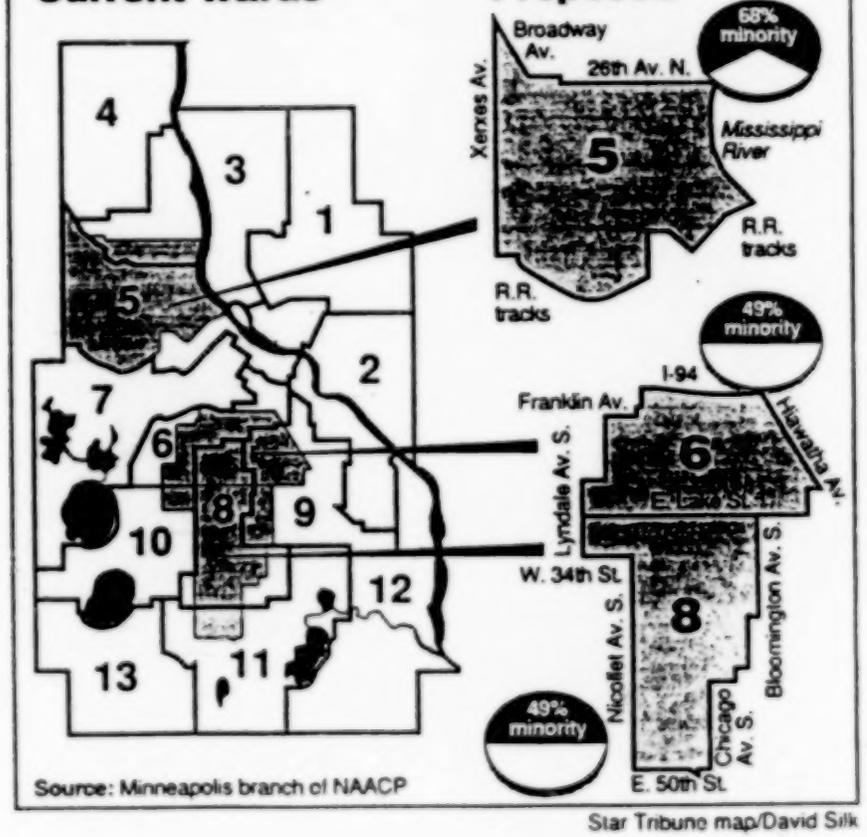
Star Tribune/Friday/January 3/1992

Racial imbalance reshapes battle over ward borders

By Peter Leyden
Staff Writer

Proposal for minority wards

The NAACP is encouraging the Minneapolis redistricting commission to create three minority-opportunity wards (toned areas of map) that will enhance the chances of minority candidates for City Council.



Star Tribune map/David Silk

Close to one of every four Minneapolis residents is a person of color, but only one of the 13 city Council members is not white.

That is the fundamental fact affecting the entire process of redistricting the city's wards, which must be done after each U.S. census. Only after the racial imbalance is addressed by creating "minority opportunity districts" can the usual wrangling between parties and incumbents take place.

"Everyone has to work around the minority opportunities districts," said Tom Trefethen, an Independent-Republican on the redistricting comission. "It's very, very easy to initiate a lawsuit."

The NAACP is pushing a ward plan that would create three minority opportunity districts, wards with high minority concentrations that could support a minority candidate. The NAACP proposes:

- That the Fifth Ward, which is centered on the Near North Side, contain 68 percent minority members. It now is 57 percent minorities, compared with 37 percent in 1980. The incumbent in that ward, Jackie Cherryhomes, is white.
- That the Sixth Ward be reworked to include the Phillips neighborhood portion of the Ninth Ward and the northern end of the Eighth Ward. That would create a new minorities-opportunities district with 49 percent minority members. The current Sixth Ward has 34 percent and had 19 percent in 1980.
- That the Eighth Ward, which is represented by the council's only minority member, Council President Sharon Sayles Belton, should extend down Interstate Hwy. 35W to Minnehaha Creek. It would contain 49 percent minority members. The ward's current percentage is 50; it was 28 percent minority in 1980.

Every ten years, Minneapolis, along with most other political bodies in the nation, must take the new census figures and adjust its political boundaries to fit the last decade's shifts in population and changes in demographics.

The new reality of Minneapolis includes a much larger minority population; it grew from 13 percent in 1980 to 22

percent in 1990. The city also saw a movement of middle-class residents that helped increase the number of DFL incumbents and undermine IR chances.

"The Democrats have to worry about incumbency protection and we have to worry about protecting a two-party system," said Trefethen. "That's going to be a central topic of disagreement."

The struggle over ward boundaries often can get fierce because those lines can determine which candidates win elections and what the city's politics will be for the coming decade.

Before the last redistricting process, Minneapolis tried to defuse overt political fighting by creating an unusual redistricting commission: a seven-member bipartisan group responsible for drawing the new boundaries.

The commission is now entering the tough horse-trading stage as it draws specific district boundaries and creates a tentative map. The next public meeting from discussion of the boundaries will be held at 6:30 p.m. Jan. 13 in room 319 of City Hall.

"On top of all the usual problems, we have the minority question," said Andy Kozak, a DFLer on the commission.

The NAACP plan carries added weight because Congress amended the federal Voting Rights Act in 1982 and made it much easier for a minority group to challenge political boundaries as discriminatory.

Challengers must show only that the *results* of redistricting were discriminatory, said City Attorney Bob Alfton. They previously had to show that the *intent* of the redistricting body was discriminatory.

"This is the first time we have this kind of leverage." said Bill Davis, chairman of the Minnesota NAACP's political action committee. "It's in the commission's interest to work with us."

The NAACP considered but rejected a plan to create two

minority opportunity districts rather than one in the north. Under it, the Fifth Ward would be centered on the western half of the Near North Side and have about 50 prcent minority members.

The Third Ward would be on the eastern half of the Near North Side and cross the Mississippi River. That ward would only have about 40 percent minority members. The Third Ward now is 34 percent minority, compared with 7 percent in 1980.

The Minneapolis branch of the NAACP unanimously voted to reject the two-district plan and consolidate minorities in one Fifth Ward district with 68 percent minority members, said Davis.

He said the vote might have been different if the Fifth Ward already was represented by a minority member. Cherryhomes, with considerable support from minorities, beat a black incumbent in 1989.

"I'm a proponent of more minority opportunities in more wards," said Cherryhomes, who plans to run for reelection in 1993. "I'm also not a proponent of 'packing.'"

The commission must steer clear of "packing" or "diluting" the minority populations in wards if it wants to avoid lawsuits. Federal courts consider both extremes as discrimination against minorities.

The NAACP national office, which has studied federal court cases, gave the Minneapolis office rough rules of thumb that consider diluting as putting fewer than 40 percent minority members in a district and consider packing as putting more than 65 to 70 percent in, said Davis.

A district often needs to be more than 50 percent minority to create opportunities, because a larger portion of minority groups are children or do not vote, he said.

The rules must be flexible to adapt to the peculiarities of different communities in different cities in different parts of the country, Davis said.

"You paid a bit to offset the people who don't vote, people who are under 18 years of age," he said.

Aside from minority considerations, the commission must juggle demands from many constituencies. Often the demands are in direct opposition to each other.

For example, the NAACP's plan for the Fifth Ward contains the homes of two incumbents, Cherryhomes and Sandra Hillary, who now represents the Third Ward. The NAACP's plan for the Sixth Ward shaves off the Wedge neighborhood, a solid base of the incumbent, newcomer Jim Niland.

"That's not the purpose of drawing the lines: to protect the incumbents," said Davis.

The commission is committed to trying to keep all incumbents in separate districts because the members believe that an incumbent should be ousted by voters, said Trefethen.

The Independent-Republicans are trying to enhance their chances in the more affluent 10th, 11th, 12th and 13th wards at the southern end of the city. In 1980, Independent-Republicans held five wards; today they hold one.

"This time it's a whole different game," said Kozak. "What they do has a cascading effect on everything else."

The city's redistricting process is somewhat in limbo because the state legislative districts must be set before the city can formally proceed.

The state process has been delayed pending settlement of some court cases, including one that the U.S. Supreme Court may consider in early January, said Alfton, the city attorney.

The city's redistricting commission will continue to work out boundaries as it waits for settlement. After state districts are formed, the city has 60 days to form its wards.

"It's really law professor's kind of stuff," said Alfton.

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Supreme Court, U.S.
FILED
MAR 26 1992
OFFICE OF THE CLERK

(5)

No. 91-1420

In the
Supreme Court of the United States
October Term, 1991

JOAN GROWE, SECRETARY OF STATE
OF THE STATE OF MINNESOTA, et al.
Appellants,

v.

JAMES EMISON, et al.
Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

APPELLEES' SUPPLEMENTAL BRIEF IN SUPPORT OF MOTION TO DISMISS

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No. 91-1420

In the Supreme Court of the United States

October Term, 1991

Joan Growe, Secretary of State of the State of Minnesota, Patricia Cotlow, Phillip Krass, Sharon LaComb, James Stein, and Theodore Suss, individually and on behalf of all citizens of Minnesota similarly situated; Patrick O'Connor, Hennepin County Auditor, individually and on behalf of all County Auditors of the State of Minnesota; the Seventy-seventh Minnesota State House of Representatives; and the Seventy-seventh Minnesota State Senate,

Appellants,

vs.

James Emison, Judy Fairbanks, Marie Iverson, Ken Dean, Steve Castillo, Lew Freeman, and Yao Lo, individually and on behalf of all Citizen and Voters of the State of Minnesota similarly situated; Duane Benson, Terry Dempsey, Delores Hettig, Richard Harmon, David E. Peterson, E.M. Patricia Pidcock, and Frank Ringsmuth; and Mark Lundgren, Carver County Auditor, individually and on behalf of all County Auditors of the State of Minnesota,

Appellees.

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No. 91-1420

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October Term, 1991

JOAN GROWE, SECRETARY OF STATE
OF THE STATE OF MINNESOTA, et al.

Appellants,

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JAMES EMISON, et al.

Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

APPELLEES' SUPPLEMENTAL BRIEF IN SUPPORT OF MOTION TO DISMISS

Pursuant to Supreme Court Rule 18.9, appellees submit this supplemental brief to address the arguments raised in Appellants' Response to Appellees' Motion to Dismiss ("Appellants' Response"). Appellants' Response constitutes an "intervening matter not available at the time of [appellees'] last filing." *Cf.* Supreme Court R. 18.9. For the reasons stated below and in the original Motion to Dismiss, appellees request that this Court dismiss appellants' Jurisdictional Statement and this appeal.

ARGUMENT

I. THE FEDERAL COURT FULLY ADHERED TO THE PRINCIPLES OF *SCOTT V. GERMANO,* WHILE THE STATE COURT IMPROPERLY FAILED TO DEFER TO THE LEGISLATURE TO PROVIDE IT WITH AN ADEQUATE OPPORTUNITY TO CONDUCT REDISTRICTING.

Contrary to appellants' assertion, the "clear and simple opinion" in *Scott v. Germano,* 381 U.S. 407, 409 (1965), does not indicate that federal courts should universally defer to state court actions. *Cf.* Appellants' Response at 2. Rather, this Court clearly held in *Germano* that a federal court must initially defer to state efforts to adopt redistricting plans but may thereafter act when the state fails to adopt valid plans in a timely fashion. *See Germano,* 381 U.S. at 409-10. In so acting, the federal court may enter such orders as the court deems appropriate. *See id.* at 409.

As appellees have noted, the federal court here took action only after the legislative process had failed to validly redistrict by late January 1992. *See* Appellees' Motion to Dismiss Appellants' Jurisdictional Statement ("Appellees' Motion") at 7. The federal court in deciding to act considered the likely delay from appeal of any state court action through the state appellate process and to this Court and noted the adverse effects of that delay on 1992 elections. *See id.* Further, the federal court acted only after finding that the legislative redistricting plan issued by the state court perpetuated Voting Rights Act violations. *See id.* at 7-8. As such, the federal court acted fully within its authority under *Germano* in taking action to conduct redistricting where the state efforts at redistricting had failed to produce a *valid* plan in a *timely* manner. *See Germano,* 381 U.S. at 409-10.

The state court's actions were not so reasonable. In issuing a legislative redistricting plan without giving the legislative process adequate opportunity to conduct redistricting, the state court violated this Court's

instruction that "reapportionment is primarily a matter for legislative consideration and determination, and . . . judicial relief becomes appropriate only when a legislature fails to reapportion according to federal constitutional requisites after having had an adequate opportunity to do so." *See White v. Weiser,* 412 U.S. 783, 794-95 (1973) (citation omitted). The state court's issuance of a legislative plan less than one month before the legislature's scheduled session threatened to unduly influence the legislative process that the decision in *Weiser* had sought to protect.

Appellants suggest that the state court's premature action is nevertheless acceptable where the legislative process was not *expected* to produce any result. *See* Appellants' Response at 3. Appellants offer no authority for this remarkable assertion that a state court is free to act when it presumes that the legislative process will not produce a valid redistricting law. *Cf. id.* This unsupported argument most assuredly does not reflect the type of deference required by *Weiser,* 412 U.S. at 794-95, or *Germano,* 381 U.S. at 409-10.

To the contrary, appellants' argument suggests that the state court could itself assess the likelihood of enactment of a plan through the legislative process and that the court could thereupon make its own decision on whether to defer.[1] There is no authority for such a judicial power.

The state's legislative process must *first* be given an adequate opportunity to act. *See Weiser,* 412 U.S. at 794-95. Where the state's efforts fail to produce valid plans in a timely fashion, a federal court may properly conduct redistricting. *See Germano,* 381 U.S. at 409-10.

---

[1] Appellants' argument also implies that a stated intent to veto legislation can be equated *before* the fact as a presumptive veto. Were that the case, Chapter 246 would have been invalidated long ago, as originally intended by the Governor.

II. THE STATE COURT'S LEGISLATIVE REDISTRICTING PLAN WAS NOT ENTITLED TO PRECLUSIVE EFFECT IN THE FEDERAL ACTION.

Despite appellants' suggestion that the state court's legislative redistricting plan was offered in the federal court action, that plan was never in fact offered as a preclusive judgment under the Full Faith and Credit Act, 28 U.S.C. § 1738.[2] *Cf.* Appellants' Response at 5. As such, under the same Act, the state court's decision was not entitled to preclusive effect. *See* 28 U.S.C. § 1738.

In any event, appellants fail to address the fact that the federal court's decision is a valid second judgment. As appellees indicated in their Motion to Dismiss, where a second judgment inconsistent with the first is reached, the second judgment prevails "whether the *res judicata* effects of the first judgment were ignored by the parties or expressly rejected by the court in a second action." 18 C. Wright, A. Miller & E. Cooper, *Federal Practice and Procedure* § 4404 at 26 (citing authorities), *cited in* Appellees' Motion at 10-11. The federal court's judgment is therefore entitled to effect, without regard to whether the first judgment was addressed by the federal court. *See id.*

III. THE FEDERAL COURT'S FINDINGS OF VOTING RIGHTS ACT VIOLATIONS WERE NOT "CLEARLY ERRONEOUS."

The federal court was presented with Voting Rights Act claims pled by the parties before it. *See* Emison Complaint, App. at A-82-88. As such, the federal court was obligated to address those issues. Likewise, the federal court had an affirmative obligation to remedy violations that it found,

[2] In addition, appellants in their response imply that they provided the state court's judgment to the federal court in early December. *Cf.* Appellants' Response at 5. In actuality, appellants merely noted the state court's action in the context of a motion asking the federal court to reconsider a stay. That motion was not brought until late January 1992.

and appropriate relief was expressly sought by the Emison and Benson appellees. *See id.*, App. at A-88-91; Benson Complaint, Supp. App. at SA-75-76.

Regardless of any state court determinations or stipulations of *some* parties on the validity or invalidity of either the 1982 districts or Chapter 246, relief for Voting Rights Act violations was available from the federal court, and those issues were therefore not moot.[3] *See* 13A C. Wright, A. Miller & E. Cooper, *Federal Practice and Procedure* § 3533 at 212 (1984, supp. 1991). The federal court therefore addressed the Voting Rights Act issues, assessed the evidence, and issued its order finding that Minnesota's existing district schemes and the appellant legislature's and state court's plans perpetuated Voting Rights Act violations by diluting minority voting rights. *See* February 19 Order, App. at A-38-39; Order Denying Stay, Supp. App. at SA-61; Appellees' Motion at 13-19.

Contrary to appellants' view, it is not appellees' responsibility to "prop up" the federal court's well-reasoned finding of Voting Rights Act violations. *Cf.* Appellants' Response at 8. Rather, it is *appellants'* burden to show that the federal court's decision was "clearly erroneous." *See* Fed. R. Civ. P. 52(a). Appellants have failed to meet this strict standard.

Appellants in their Jurisdictional Statement do not argue that the federal court's findings of Voting Rights Act violations were incorrect. Instead, appellants maintain only that the federal court did not have sufficient evidence to support its findings. *See* Jurisdictional Statement at 18-20. Nevertheless, appellants ignore the federal court's thorough examination of the Senate's "totality of circumstances" factors, as well as the federal court's concise conclusion that:

[3] Appellants in raising what essentially is their mootness argument also note that Chapter 246 contained a provision repealing the laws that established the 1982 legislative districts. *Cf.* Appellants' Response at 6 n.4, 8 n.6. As it was part of Chapter 246, however, the repealer provision itself was invalidated when Chapter 246 was declared unconstitutional. The 1982 districts were thereafter once again in effect.

> the all-white senate delegation from Minneapolis, the significant proportional underrepresentation of minorities from the overall legislative delegation from Minneapolis, the apparent attempt to protect incumbencies at the expense of minority concentrations, the fragmentation of a geographically cohesive minority population into different senate districts, the educational disadvantage of Minneapolis minorities, the segregation in the Minneapolis school districts, and the judicial experience showing the need for super-majority minority districts, when considered altogether, are sufficient to create a *prima facie* case in the totality of the circumstances which exists here.

February 19 Order, App. at A-38.

By failing to show that the federal court's analysis of the evidence or its conclusion are "clearly erroneous," appellants have failed to meet the applicable standard of review. It is not sufficient to merely suggest that the federal court, after studying extensive evidence of Voting Rights Act violations, failed to consider sufficient evidence. It is not enough to argue that appellees somehow have the responsibility to "prop up" the federal court's order. Appellants have an affirmative obligation to show that the federal court's order was clearly in error. They have failed to do so, and the order is therefore entitled to affirmance.

IV. THE FEDERAL COURT RESPECTED THE STATE POLICY THAT IT COULD DISCERN, AND ITS PLANS ARE THEREFORE FULLY IN ACCORD WITH *WEISER* AND *UPHAM.*

The federal court was not bound by *Weiser,* 412 U.S. 783, or *Upham v. Seamon,* 456 U.S. 37 (1982) to follow Chapter 246, Chapter 246 as the legislature proposed to amend it, or Chapter 246 as adopted by the state court. *See* Appellees' Motion at 22-27. As was clearly stated by this Court in *Weiser,* "the District Court should defer to state policy in fashioning relief *only where that policy is*

consistent with constitutional norms and is not itself vulnerable to legal challenge." Weiser, 412 U.S. at 797 (emphasis added).

Chapter 246 had been found by both the state and the federal court to be unconstitutional due to numerous defects. The federal court recognized that Chapter 246 contained at least 160 errors in more than 30 state senate and house districts covering approximately one-third of the state's 87 counties. *See* February 19 Order, App. at A-52 n.50. In addition, the federal court itself found that Senate File 1596, intended by the legislature to "correct" the extensive defects of Chapter 246, was not entitled to deference as "state policy" after the Governor's veto of that bill. *See id.* at A-43. Finally, the federal court found that Chapter 246 and the proposed amendments in Senate Filed 1596 (which together constituted appellant legislature's proposed legislative redistricting plan), as well as the state court's own plan based on Chapter 246, perpetuated violations of the Voting Rights Act. *See id.,* App. at A-38-39.

In light of these findings, *Weiser* virtually mandates that the federal court *not* give deference to these various proposals. Chapter 246, Chapter 246 as it was proposed to be "corrected," and Chapter 246 as adopted by the state court were all "vulnerable to legal challenge," as is reflected by the federal court's findings of statutory and constitutional violations. *Cf. Weiser,* 412 U.S. at 797.

Furthermore, the federal court, again contrary to appellants' representations, specifically found that "the plan proposed by [appellant legislature] and adopted by the state court is not only gerrymandered to protect incumbents in Minneapolis, foretelling the continued dilution of minority voting rights, but it also contains unwarranted population deviations and lacks compactness statewide." *Cf.* Order Denying Stay, Supp. App. at SA-61 *with* Appellants' Response at 12 n.12. Given these violations, as well as the extended deficiencies in Chapter 246, the federal court was not obligated to defer to that chapter, to that chapter as proposed to be amended, or to

the state court's adoption of a plan based on that chapter.

Appellants continue to characterize the necessary corrections to Chapter 246 as merely "technical." Nevertheless, excessive population deviations, noncontiguous districts, overlapping districts, indecipherable descriptions, and minority voting rights violations do not constitute "technicalities."[4]

Appellants also continue to imply that the corrections to Chapter 246 must necessarily be those found in Senate File 1596. *See, e.g.,* Appellants' Response at 8-9. Each of the 160 defects in Chapter 246 could be corrected in any number of ways, however, and no state policy exists to indicate how the legislative process may have corrected those defects, since Senate File 1596 was vetoed by the Governor. *Cf.* February 19 Order, App. at A-43. Each of the dozens of necessary corrections therefore involved the state court's or the parties' guess at the legislative intent behind Chapter 246, a hastily-drafted law. Such a result is not the intent of the deference requirement in *Weiser,* 412 U.S. at 794-95, and the federal court therefore acted properly in not deferring to appellants' supposed "state policy."

V. THE FEDERAL COURT'S CONGRESSIONAL REDISTRICTING PLAN SHOULD BE AFFIRMED.

Appellants maintain that the only delay in the state court's issuance of a congressional plan was caused by the federal court's temporary stay of the state court. *See* Appellants' Response at 13. Appellants fail to note, however, that the state court during the period of this stay took actions necessary to formulate its own congressional

[4] Appellants also continue to add complication and confusion to this proceeding by making assertions outside the record. For example, appellants suggest that the federal court's plan will "certainly" have description errors if transcribed from map to written form. *See* Appellants' Response at 11 n.10. There is no evidence of this, nor could there be, and there is additionally no support for any proposition that the federal court's maps must even be reduced to writing.

plan, including the scheduling of plan submissions and of hearings required for that court's promulgation of a plan. Appellants' perception of the source of this delay is therefore inaccurate.

Appellants' argument that Senate File 1597 constitutes valid evidence of state policy is also incorrect. *Cf. id.* Senate File 1597 does *not* constitute state policy, a determination reached by *both* courts in this matter. *See Cotlow v. Growe,* C8-91-985, Procedural Order No. 7 (Minn. Spec. Redis. Panel, March 3, 1992), App. at A-445-446 n.1; February 19 Order, App. at A-53. Appellants' suggestion that Senate File 1597 is state policy is therefore not only inaccurate, but it is also directly contrary to findings of the very court upon which appellants seek to rely.

CONCLUSION

For the above reasons and for the reasons contained in Appellees' Motion to Dismiss Appellants' Jurisdictional Statement, appellees hereby request that this Court dismiss appellants' Jurisdictional Statement and this appeal.

Dated: March 25, 1992

Respectfully submitted,

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Supreme Court, U.S.
FILED
MAY 29 1992
OFFICE OF THE CLERK

No. 91-1420

In the Supreme Court of the United States

OCTOBER TERM, 1991

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APPELLANTS

v.

JAMES EMISON, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MINNESOTA

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING APPELLANTS

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QUESTION PRESENTED

The United States will address the following question:

Whether the district court's finding of a Section 2 violation is based on improper standards and is clearly erroneous.

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In the Supreme Court of the United States

OCTOBER TERM, 1991

No. 91-1420

JOAN GROWE, SECRETARY OF STATE
OF THE STATE OF MINNESOTA, ET AL.,
APPELLANTS

v.

JAMES EMISON, ET AL.

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*ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA*

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING APPELLANTS

INTEREST OF THE UNITED STATES

This case involves the application of Section 2 of the Voting Rights Act of 1965, 42 U.S.C. 1973, to a claim that the drawing of single-member legislative districts results in impermissible dilution of minority voting power. The United States has the primary responsibility for enforcing Section 2, and the decision of the Court in this case will have an important effect on federal enforcement efforts. In addition, the United States has participated either as a party or as an amicus curiae in the Court's previous Section 2 cases. It has also responded to requests from the Court concerning whether certiorari should be granted in cases raising Section 2 issues.

STATEMENT

The State of Minnesota has appealed from a federal district court order establishing new state legislative and federal congressional districts. Our interest is limited to the district court's application of Section 2 of the Voting Rights Act, 42 U.S.C. 1973, to the redistricting of the state legislature. We therefore confine our discussion to that aspect of the case.

1. In 1982, a federal district court issued a redistricting plan for the Minnesota state legislature. J.S. App. A13. The Minnesota legislature adopted that plan as its own in 1983. *Ibid.* Thereafter, in January 1991, Patricia Cotlow and others (Cotlow appellants) brought suit in state court alleging that the legislative districts in the 1983 plan had become malapportioned, and that the state legislature had failed to redistrict based on the 1990 census, in violation of the Fourteenth Amendment to the United States Constitution and Article IV, Section 2 of the Minnesota Constitution. J.S. App. A15 n.5, A17 n.9, A174-A191.

In March 1991, James Emison and others (Emison appellees) brought suit in federal district court against Secretary of State Jane Growe and Carver County Auditor Mark Lundgren (State appellants). J.S. App. A14, A17 n.9. The Emison appellees include three Caucasians, one Native American, one Hispanic, one African-American, and one Asian-American. *Id.* at A14. Like the state court plaintiffs, the Emison appellees alleged that the districting plan contained in the 1983 legislation violated their right to an equal vote under the Fourteenth Amendment. J.S. App. A15. In addition, they claimed that the 1983 plan violated Section 2 of the Voting Rights Act, 42 U.S.C. 1973; according to the Emison appellees, the 1983 plan had the effect, *inter alia*, of diluting

the voting strength of minority voters from Minneapolis by fragmenting them into multiple districts. J.S. App. A5. As relief, they sought the creation of a new legislative district that would unite the minority population in south Minneapolis with nearby minority populations. J.S. App. A15-A16.

In May 1991, the Minnesota legislature passed a bill, known as Chapter 246, establishing a new districting plan for the state legislature. J.S. App. A18. The Governor attempted to veto the bill, but a state court held the veto ineffective. The bill therefore became law. *Ibid.*

In August 1991, Duane Benson and others (Benson appellees) filed suit in federal district court challenging Chapter 246 on constitutional grounds. J.S. App. A17 n.9, A18. The district court consolidated that case with the Emison case already pending before it. The Cotlow appellants (plaintiffs in the state court action), the Minnesota State House of Representatives, and the Minnesota State Senate—all appellants herein—were permitted to intervene in the consolidated action. *Id.* at A17 & n.9.

In October 1991, the state trial court determined that Chapter 246 violated both the state and federal constitutions, and invited the parties to submit remedial plans. J.S. App. A219-A220, A225-A226. Thereafter, the state court adopted a new redistricting plan for the state legislature, and finalized the plan on December 9, 1991. *Id.* at A20, A234-A248, A249-A354. That plan used Chapter 246 as its starting point, modifying it as necessary to correct its constitutional defects. *Id.* at A246-A247, A261-A262. The federal district court stayed the effect of the state court's plan, *id.* at A23, A141-A159, and the State appealed to this Court.

In January 1992, the state legislature enacted a redistricting bill that tracked the state court plan. J.S. App. A23-A24. That bill was vetoed by the Governor. *Id.* at A24. This Court then vacated the federal district court's stay of the state court's redistricting order. *Id.* at A24 n.26, A166-A168. In late January, the state court issued a final order adopting its previously issued redistricting plan. *Id.* at A355-A356. State officials directed local election officials to redraw district lines in accordance with that plan. *Id.* at A371-A372.

2. On February 19, 1992, the federal district court issued its own redistricting order. J.S. App. A11-A70. The court held that the State had violated Section 2 of the Voting Rights Act by failing to create a state senatorial district in Minneapolis with a super-majority of minority voters. J.S. App. A26-A41.[1] For purposes of this holding, minority voters included African-Americans, Asian-Americans, Native Americans, Hispanics, and others. *Id.* at A34.

In reaching this conclusion, the court declined to apply the framework established by this Court in *Thornburg* v. *Gingles*, 478 U.S. 30 (1986), for deciding whether multimember districts result in impermissible dilution of minority votes in violation of Section 2. J.S. App. A28-A30. In particular, the court rejected the portion of *Gingles* requiring plaintiffs to demonstrate the existence of racially polarized voting in the challenged district or districts. Thus, although "[t]he record contain[ed] no statistical evi-

[1] The district court also held that the existing congressional districts violated the "equal representation" standard of Article I, Section 2 of the federal Constitution. J.S. App. A53-A54. The court adopted a congressional redistricting plan prepared by court-appointed special masters. *Id.* at A55-A56.

dence * * * that the minority group is politically cohesive and that bloc voting operates to defeat minority preferred candidates," *id.* at A30 n.30, the court did not view the absence of such evidence as dispositive. *Id.* at A30.

Rather than consider the *Gingles* framework, the court looked to the "totality of the circumstances" in determining whether a Section 2 violation had been shown. J.S. App. A31-A41. Applying the factors set forth in the Senate Judiciary Committee's Report on the 1982 amendment to Section 2, S. Rep. No. 417, 97th Cong., 2d Sess. 28-29 (1982) (Senate Report), the court found that the totality of the circumstances demonstrated a Section 2 violation. J.S. App. A38. In particular, the court believed that "[t]he all-white senate delegation from Minneapolis, the significant proportional underrepresentation of minorities from the overall legislative delegation from Minneapolis, the apparent attempt to protect incumbencies at the expense of minority concentrations, the fragmentation of a geographically cohesive minority population into different senate districts, the educational disadvantage of Minneapolis minorities, [and] the segregation in the Minneapolis school districts," sufficed to establish a Section 2 violation. J.S. App. A38.

The district court also concluded that the state court plan did not remedy the Section 2 violation. J.S. App. A38-A39. In the district court's view, while that plan provided two senate districts in which minorities would have significant influence, the creation of a super-majority minority senate district was necessary to comply with Section 2. J.S. App. A38-A39. The court therefore entered a redistricting plan containing a senate district with a total minority

population of 60% and an African-American population of 43%. *Id.* at A41.[2]

Judge McLaughlin dissented in part. J.S. App. A59-A70. He saw no basis for failing to apply the *Gingles* framework in the context of challenges to single-member legislative districts. *Id.* at A63-A64. Since plaintiffs had failed to establish the existence of those factors, Judge MacLaughlin concluded that they had not met their burden of proving a Section 2 violation. J.S. App. A64.[3]

SUMMARY OF ARGUMENT

Thornburg v. *Gingles*, 478 U.S. 30 (1986), establishes three threshold requirements for plaintiffs seeking to invalidate multimember districts under Section 2 of the Voting Rights Act, 42 U.S.C. 1973. Under *Gingles*, a minority group must prove that (1) "it is sufficiently large and geographically compact to constitute a majority in a single-member district"; (2) "it is politically cohesive"; and (3) "the white

[2] In developing this plan, the district court did not use Chapter 246 as its starting point. J.S. App. A42-A43. The court concluded that numerous infirmities in Chapter 246, including excessive population disparities and noncontiguous districts, justified discarding it altogether. *Id.* at A43. Instead, the court used the redistricting criteria established in a bipartisan concurrent resolution of the legislature as the basis for drawing its plan. *Id.* at A43-A44.

[3] Judge MacLaughlin also argued that the majority's finding of a Section 2 violation was improper because the parties had never made such a claim with respect to Chapter 246. J.S. App. A63. He further observed that the majority erred in rejecting Chapter 246 in its entirety rather than modifying it only to the extent necessary to remedy its statutory and constitutional defects. J.S. App. A68. Judge MacLaughlin concurred in the majority's resolution of the congressional reapportionment issue.

majority votes sufficiently as a bloc to enable it * * * usually to defeat the minority's preferred candidate." 478 U.S. at 48-51.

Gingles involved a Section 2 challenge to multimember districts, which possess an inherent tendency to dilute the voting strength of racial and other minorities. 478 U.S. at 47 & n.13; *Rogers* v. *Lodge*, 458 U.S. 613, 616 (1982). This case, by contrast, involves single-member districts. The district court clearly erred in refusing to apply the three *Gingles* preconditions in this case, because the paradoxical effect of its decision is to make single-member districts *more* vulnerable than multimember districts to challenge under Section 2.

The reasons underpinning this Court's recognition of the *Gingles* preconditions in the context of multimember districts apply with equal force to cases involving single-member districts. Absent proof that the plaintiff minority group could form a majority of a single-member district, that group "cannot claim to have been injured by" the challenged districting scheme. *Gingles*, 478 U.S. at 50 n.17. And absent proof of racially polarized voting by minority and majority voters, "it cannot be said that the selection of a [particular] electoral structure thwarts distinctive minority group interests" or "impedes [the minority group's] ability to elect." *Id.* at 51.

The district court's reasons for declining to apply the *Gingles* preconditions in this case are not persuasive. *First*, the fact that a State's interest in preserving an existing multimember districting plan may be more significant than its interest in avoiding boundary changes to a single-member districting plan is of no relevance to the logically prior question of whether plaintiffs can make out a prima facie case of vote dilution in the first place. *Second*, the *Gingles*

preconditions are not judicially created limitations on Section 2 of the type rejected in *Chisom* v. *Roemer*, 111 S. Ct. 2354 (1991), but instead serve to effectuate Congress's intent by affording relief under Section 2 only to those plaintiffs who can prove their entitlement thereto. *Third*, contrary to the district court's assumption, the existence of racial bloc voting cannot be presumed; "plaintiffs must prove it." *Gingles*, 478 U.S. at 46.

ARGUMENT

THE DISTRICT COURT'S FINDING OF A SECTION 2 VIOLATION IS BASED ON IMPROPER LEGAL STANDARDS AND IS CLEARLY ERRONEOUS

1. In *Thornburg* v. *Gingles*, 478 U.S. 30 (1986), this Court established the threshold requirements applicable to a claim that the use of multimember districts has diluted the votes of minority group members in violation of Section 2 of the Voting Rights Act, 42 U.S.C. 1973. As a prerequisite to the maintenance of such a claim, a minority group must show that (1) "it is sufficiently large and geographically compact to constitute a majority in a single-member district"; (2) "it is politically cohesive"; and (3) "the white majority votes sufficiently as a bloc to enable it * * * usually to defeat the minority's preferred candidate." 478 U.S. at 48-51. Only after those preconditions have been established should a court consider other relevant factors to determine whether, under the totality of the circumstances, minority group members have been denied an equal opportunity to participate in the political process and to elect representatives of their choice. *Id.* at 77-80.[4]

[4] See, *e.g.*, *East Jefferson Coalition* v. *Parish of Jefferson*, 926 F.2d 487, 491 (5th Cir. 1991); *Jeffers* v. *Clinton*, 730 F. Supp. 196, 209 (E.D. Ark. 1989), aff'd, 111 S. Ct. 662 (1991); *Neal* v. *Coleburn*, 689 F. Supp. 1426, 1434-1437 (E.D. Va. 1988); see also Senate Report 33 (rejecting suggestion that proof of at-large elections, underrepresentation of minorities, and one additional factor such as racially polarized voting would suffice to establish Section 2 violation). But see *Concerned Citizens* v. *Hardee County Bd.*, 906 F.2d 524, 526 (11th Cir. 1990) (suggesting that consideration of the totality of circumstances is optional once the *Gingles* preconditions have been satisfied, because proof of other factors is "'*not essential to*'" a Section 2 claim) (quoting *Gingles*, 478 U.S. at 48 n.15); *Gunn* v. *Chickasaw County*, 705 F. Supp. 315, 320 (N.D. Miss. 1989) (same). Compare *Solomon* v. *Liberty County*, 899 F.2d 1012 (11th Cir. 1990) (en banc) (evenly divided on this question), cert. denied, 111 S. Ct. 670 (1991).

Gingles involved a challenge to the validity of multimember legislative districts, and the Court expressly declined to decide whether the same or additional preconditions applied to suits challenging single-member districts under the Voting Rights Act. 478 U.S. at 47 n.12. The Court recognized, however, that multimember districts by their very nature tend to dilute the voting power of minorities. See *Gingles*, 478 U.S. at 47 & n.13; *id.* at 87 (O'Connor, J., concurring in judgment) ("[T]he at-large or multimember district has an inherent tendency to submerge the votes of the minority."). Indeed, while declining to hold multimember districts *per se* unconstitutional, the Court has repeatedly emphasized the threat that such districts, as distinguished from single-member districts, pose to the ability of minority groups to participate on an equal basis in the political process. See, *e.g.*, *Rogers* v. *Lodge*, 458 U.S. 613, 616 (1982); *id.* at 632, 637 (Stevens, J., dissenting); *Wise* v. *Lipscomb*, 437 U.S. 535, 540-541 (1978) (opinion of White, J.); *Connor* v. *Finch*, 431 U.S. 407, 415 (1977); *Whitcomb* v. *Chavis*, 403 U.S. 124, 143-144, 158-159 (1971); see

also *Burns* v. *Richardson*, 384 U.S. 73, 88 (1966); *Fortson* v. *Dorsey*, 379 U.S. 433, 439 (1965). For that reason, the Court has instructed lower federal courts to avoid using multimember districts when devising court-ordered redistricting schemes. *Wise* v. *Lipscomb*, 437 U.S. at 540-541 ("a court-drawn plan should prefer single-member districts over multimember districts, absent persuasive justification to the contrary"); *Connor* v. *Finch*, 431 U.S. at 415 ("single-member districts are to be preferred in court-ordered legislative reapportionment plans").

Viewed in this light, the district court's ruling is clearly wrong. The court refused to apply the *Gingles* preconditions to vote dilution claims involving single-member districts, in effect rendering those districts *more* vulnerable than multimember districts to challenge under Section 2. That result is contrary to this Court's repeated emphasis on the inherent dilutive nature of multimember districts, and is wholly unsupported by either the reasoning of *Gingles* or the language of the Voting Rights Act.[5]

[5] The legislative history of the 1982 amendments to the Voting Rights Act likewise suggests that the *Gingles* factors are applicable across the board, because it makes clear that proof of more than numerical underrepresentation and racial bloc voting is essential to establish a Section 2 violation. See Senate Report 33; 1 *Voting Rights Act: Hearings on S. 53, et al. Before the Subcomm. on the Constitution of the Senate Comm. on the Judiciary*, 97th Cong., 2d Sess. 819-820 (1982) (prepared statement of Armand Derfner, head of the Voting Rights Project) ("amended section 2 * * * applies only in that small category of places where there *is* no functioning system of politics for minority voters, where there is already severe racial division, and where it is simply impossible for minority voters to have any significant *opportunity* under the election system as it is"); accord, *e.g.*, *id.* at 287 (memorandum of Ralph G. Neas, Exec. Dir., Leadership Conf. on Civil Rights) ("the mere failure of minorities to elect a proportion of the

2. The reasons given by this Court for establishing the *Gingles* preconditions in the context of challenges to multimember districts are directly applicable to suits alleging that single-member districts result in impermissible dilution of minority votes. For example, the *Gingles* requirement that the minority group be "sufficiently large and geographically compact to constitute a majority in a single-member district," 478 U.S. at 50, was explained by the *Gingles* Court on the ground that "[u]nless minority voters possess the *potential* to elect representatives in the absence of the challenged structure or practice, they cannot claim to have been injured by that structure or practice." *Id.* at 50 n.17. Both the express terms and the underlying logic of that explanation apply with equal force to dilution cases involving single-member districts. Unless a minority group can demonstrate that it *could* constitute a majority in a single-member district so as to enable it to elect its preferred candidates, the alleged fragmentation of that group's voters into multiple districts could not possibly have denied that group an equal "opportunity * * * to elect representatives of [its] choice." 42 U.S.C. 1973(b). Thus, *Gingles* compels the conclusion that plaintiffs making fragmentation challenges to single-member districts must satisfy the first *Gingles* prong as a threshold requirement.[6]

winners because of racially polarized bloc voting *would not, without more*[,] *establish a violation of Section 2, as amended.* Additional proof of other factors would be required"); *id.* at 564 (testimony of Joaquin G. Avila, Assoc. Counsel, MALDEF); *id.* at 1184 (testimony of Frank Parker, Dir., Voting Rights Project, Lawyers' Comm. for Civil Rights Under Law).

[6] A number of courts have so held. See, *e.g.*, *Turner* v. *Arkansas*, 784 F. Supp. 553, 567-571 (E.D. Ark. 1991) (three-

Similarly, proof of racially polarized voting, including proof of both minority political cohesion and majority bloc voting, is at least as important in fragmentation cases as it is in multimember district cases. As the Court explained in *Gingles*, "[i]f the minority group is not politically cohesive, it cannot be said that the selection of a [particular] electoral structure thwarts distinctive minority group interests." *Gingles*, 478 U.S. at 51. And unless the minority group can demonstrate significant majority bloc voting, it cannot claim that "submergence in a [majority] white * * * district impedes its ability to elect." *Ibid.* In short, without racial polarization, there cannot be racial vote dilution. Until the decision in this case, no court had suggested otherwise.[7]

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judge court), appeal pending, No. 91-1615; *Hastert* v. *State Bd. of Elections*, 777 F. Supp. 634, 654-655 (N.D. Ill. 1991) (three-judge court); *Ewing* v. *Monroe County*, 740 F. Supp. 417, 419 (N.D. Miss. 1990); *Jeffers* v. *Clinton*, 730 F. Supp. 196, 205 (E.D. Ark. 1989) (three-judge court), aff'd, 111 S. Ct. 662 (1991); *Gunn* v. *Chickasaw County*, 705 F. Supp. 315, 318 (N.D. Miss. 1989); *McDaniels* v. *Mehfoud*, 702 F. Supp. 588, 591-592 (E.D. Va. 1988); *Neal* v. *Coleburn*, 689 F. Supp. 1426, 1434-1435 (E.D. Va. 1988); see also *Latino Political Action Comm.* v. *City of Boston*, 784 F.2d 409, 415 (1st Cir. 1986); *Gingles* v. *Edmisten*, 590 F. Supp. 345, 380-381 (E.D.N.C. 1984) (three-judge court), aff'd in part and rev'd in part, *Thornburg* v. *Gingles*, 478 U.S. 30 (1986). Contra *Armour* v. *Ohio*, 775 F. Supp. 1044, 1051-1052 (N.D. Ohio 1991). Of course, the requirement that the minority group be sufficiently numerous and compact to constitute a majority of a single-member district may be relaxed where intentional racial discrimination has been shown, see *Garza* v. *County of Los Angeles*, 918 F.2d 763, 770-771 (9th Cir. 1990), cert. denied, 111 S. Ct. 681 (1991), but no such showing has been made in this case.

[7] See, *e.g.*, *East Jefferson Coalition* v. *Parish of Jefferson*, 926 F.2d 487, 491-493 (5th Cir. 1991); *Hastert* v. *State Bd. of Elections*, 777 F. Supp. 634, 655 (N.D. Ill. 1991) (three-

3. Applying the *Gingles* framework leads inexorably to the conclusion that appellees failed to establish a Section 2 violation. For although the district court found that a combined minority consisting of African-Americans, Hispanics, Asian-Americans, Native Americans, and others would have the potential to elect candidates of its choice in a single-member district, it found no evidence that this combined minority was politically cohesive or that whites usually vote as a bloc to defeat the combined minority's preferred candidates. See *Campos* v. *City of Baytown*, 840 F.2d 1240, 1244 (5th Cir. 1988) (permissible to combine minorities protected by Section 2, but only when the minorities so combined "actually vote together and are impeded in their ability to elect their own candidates" by white bloc voting), cert. denied, 492 U.S. 905 (1989); *Concerned Citizens* v. *Hardee County Bd.*, 906 F.2d 524, 526 (11th Cir. 1990); cf. *Campos* v. *City of Baytown*, 849 F.2d 943 (5th Cir. 1988) (Higginbotham, J., dissenting from denial of rehearing en banc) (questioning appropriateness of aggregating different minority groups for purposes of Section 2). Thus, the court effectively conceded that the second and third *Gingles* factors—minority cohesiveness and majority bloc voting—are absent in this case. See J.A. App. A30 n.30.[8]

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judge court); *Ewing* v. *Monroe County*, 740 F. Supp. 417, 419 (N.D. Miss. 1990); *Williams* v. *City of Dallas*, 734 F. Supp. 1317, 1413 (N.D. Tex. 1990); *Jeffers* v. *Clinton*, 730 F. Supp. 196, 205 (E.D. Ark. 1989), aff'd, 111 S. Ct. 662 (1991); *Gunn* v. *Chickasaw County*, 705 F. Supp. 315, 318 (N.D. Miss. 1989); *McDaniels* v. *Mehfoud*, 702 F. Supp. 588, 591 (E.D. Va. 1988); *Neal* v. *Coleburn*, 689 F. Supp. 1426, 1435 (E.D. Va. 1988).

[8] Appellees' failure to prove minority cohesiveness also compels the conclusion that they cannot satisfy the first

The district court did not view appellees' failure to satisfy the *Gingles* preconditions as dispositive. The court gave three reasons for reaching that conclusion. None is persuasive.

First, the district court suggested that since a State's interest in avoiding changes in particular district boundaries is weaker than its interest in avoiding a change from multimember to single-member districts, a different framework for evaluating fragmentation claims might be appropriate. J.S. App. A29 n.29. A State's interest in preserving its electoral system, however, becomes important only after plaintiffs have made a prima facie showing of dilution. It is at that point that a court must assess the totality of the circumstances—including the State's interest in maintaining its present electoral system—and decide whether a Section 2 violation has been proven. See *Houston Lawyers' Ass'n* v. *Attorney General*, 111 S. Ct. 2376, 2381 (1991). In some fragmentation cases, of course, it may well be that a State's interest in preserving its electoral system is insufficient to outweigh the plaintiffs' showing of dilution.

Gingles requirement by aggregating the voting power of different minority groups. Assuming that it is permissible under some circumstances to aggregate different minority groups for purposes of determining whether a majority-minority single-member district could be created, such aggregation is clearly improper absent proof that those different minority groups together exhibit cohesive voting patterns. *Romero* v. *City of Pomona*, 883 F.2d 1418, 1426-1427 (9th Cir. 1989), overruled in part on other grounds, *Townsend* v. *Holman Consulting Corp.*, 929 F.2d 1358, 1363 (9th Cir. 1990) (en banc); *Brewer* v. *Ham*, 876 F.2d 448, 453-454 (5th Cir. 1989). The record is devoid of evidence that any single minority group can constitute a majority of the voting age population of any single-member legislative district in Minneapolis. See J.S. App. A380-A381, A383-A384.

But that does not justify relieving plaintiffs of their initial burden of making a prima facie showing of dilution.

Second, the district court concluded that this Court's decision in *Chisom* v. *Roemer*, 111 S. Ct. 2354 (1991), had undercut *Gingles* because it "reject[ed] the use of judicially created limitations to restrict coverage under Section 2." J.S. App. A29-A30. In *Chisom*, the Court declined to exempt elected judges from the scope of Section 2 in the absence of any indication that Congress had intended to achieve that result when it amended the statute in 1982. 111 S. Ct. at 2368. The *Gingles* preconditions, by contrast, serve to "effectuate[] the intent of Congress," 478 U.S. at 48-49 n.15, by limiting relief under Section 2 to those plaintiffs who can demonstrate that they have in fact been deprived of an equal opportunity to participate in the electoral process and elect representatives of their choice. As the Court stated in *Gingles*, "[b]y recognizing the primacy of the history and extent of minority electoral success and of racial bloc voting, the Court simply requires that [Section] 2 plaintiffs prove their claim before they may be awarded relief." *Ibid.* Likewise, by requiring plaintiffs to satisfy the first *Gingles* precondition, the Court merely assures that relief under Section 2 will be limited to those minority groups that have actually been injured by the challenged structures or practices. 478 U.S. at 50 n.17. Thus, the *Gingles* preconditions do not artificially limit the right created by Congress in Section 2, but instead implement that right through judicially manageable standards.

Finally, the district court intimated that racial polarization should not have to be proven because it exists in most jurisdictions. J.S. App. A30 n.30. But

as the Court explained in *Gingles*, the "results test does not assume the existence of racial bloc voting; plaintiffs must prove it." 478 U.S. at 46; see Senate Report 33-34. Indeed, *Gingles* holds that Section 2 requires a district-specific inquiry into bloc voting. For that reason, it is improper to use state-wide bloc voting patterns to infer that there is bloc voting in particular districts. 478 U.S. at 59 n.28. It follows *a fortiori* that it is improper to use assumptions about nationwide bloc voting to infer that there must be bloc voting in particular districts.

This is not to suggest that the issues of minority cohesion and majority bloc voting must always be addressed through statistical evidence, as the district court may have assumed. J.S. App. A30 n.30. *Gingles* makes clear that statistical evidence is just one way to prove or disprove the existence of racial polarization. 478 U.S. at 56, 57 n.25; see also *Sanchez* v. *Bond*, 875 F.2d 1488 (10th Cir. 1989), cert. denied, 111 S. Ct. 340 (1990). But plaintiffs must produce probative evidence of some kind sufficient to support a finding that the minority group is politically cohesive and that whites usually vote sufficiently as a bloc to defeat their candidates. Since appellees failed to do that, the district court's finding of a Section 2 violation should be reversed.[9]

[9] Appellants argue that even if there were a Section 2 violation, the district court should not have issued a redistricting plan that differed so substantially from Chapter 246. Instead, appellants contend, the district court should have modified Chapter 246 (as corrected by the state court) only to the extent necessary to remedy the Section 2 violation. J.S. 21-23; see *Upham* v. *Seamon*, 456 U.S. 37 (1982). Since the finding of a Section 2 violation cannot stand, there is no need for the Court to reach this issue.

CONCLUSION

The district court's finding of a Section 2 violation and its order redistricting the state legislature should be reversed.

Respectfully submitted.

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MAY 1992

☆ U. S. GOVERNMENT PRINTING OFFICE: 1992 312324 48447

Supreme Court, U.S.
FILED
MAY 29 1992
OFFICE OF THE CLERK

(7)

No. 91-1420

In The
Supreme Court of the United States
October Term, 1991

JOAN GROWE, SECRETARY OF STATE OF THE STATE OF MINNESOTA, ET AL.,
Appellants,

vs.

JAMES EMISON, ET AL.,
Appellees.

Appeal from the United States District Court for the District of Minnesota

JOINT APPENDIX

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Emison, et al v. Growe, et al.

U.S. District Court
District of Minnesota (Minneapolis)

CIVIL DOCKET FOR CASE #: 91-CV-202

Emison, et al v. Growe, et al — Filed: 3/18/91
Assigned to: Judge Harry H MacLaughlin
Referred to: Magistrate Judge Floyd E Boline
Demand: $0,000 — Nature of Suit: 441
Lead Docket: None — Jurisdiction: Federal Question
Dkt# in other court: None

Cause: 28:1343 Violation of Civil Rights

3/18/91	1	COMPLAINT - Summons issued. Assigned to Judge Harry H. MacLaughlin per Civil Rights list and referred to Magistrate Judge Franklin L. Noel (22 pages) (ps) [Entry date 03/19/91] [4:91cv202]
3/19/91	2	RETURN OF SERVICE (Summons) executed upon defendant Joan Anderson Growe on 3/19/91 (jr) [Entry date 03/20/91] [4:91cv202]
3/19/91	2	RETURN OF SERVICE (Summons) executed upon defendant Mark Lundgren on 3/19/91 (jr) [Entry date 03/20/91] [4:91cv202]

3/29/91	3	AMENDED COMPLAINT [1-1] by plaintiffs (23 pgs) - Amended Summons issued (sh) [Entry date 04/02/91] [4:91cv202]
4/1/91	4	RETURN OF SERVICE (Amended Summons) executed upon defendant Joan Anderson Growe on 3/29/91 (jr) [Entry date 04/04/91] [4:91cv202]
4/1/91	4	RETURN OF SERVICE (Amended Summons) executed upon defendant Mark Lundgren on 3/29/91 (jr) [Entry date 04/04/91] [4:91cv202]
4/2/91	5	MOTION to intervene by MN House of Representatives and the MN State Senate (to Magistrate Judge Franklin L. Noel) Ret. 5/20/91 at 11:00 a.m. (jr) [Entry date 04/04/91] [4:91cv202]
4/15/91	6	ORDER (Judge Donald P. Lay/4/8/91) for designation of three-judge district court as follows: Donald P. Lay, Chief Judge of the United States Court of Appeals for the Eighth Circuit Court, and the Honorable Paul Magnuson, United States District Court Judge, to serve with the Honorable Harry H. MacLaughlin, United States District Court Judge, as members of, and with him to constitute the District Court to hear and determine this action. (c: attys.) (jr) [Entry date 04/16/91] [4:91cv202]
4/16/91	7	ANSWER by defendant Mark Lundgren (jr) [4:91cv202]

5/1/91	9	Memorandum by intervenor MN House of Representatives, intervenor MN State Senate in support of their motion to intervene [5-1] [8-1] (jr) [Entry date 05/03/91] [4:91cv202]
5/6/91	10	Separate ANSWER by defendant Joan Growe (jr) [Entry date 05/08/91] [4:91cv202]
5/16/91	11	ORDER (Magistrate Judge Franklin L. Noel / 5/15/91) that the motion of the Seventy-seventh Minnesota State House of Representatives and the Seventy-seventh Minnesota State Senate to intervene in this matter is GRANTED. (c: attys.) (jr) [4:91cv202]
5/16/91	12	Joint ANSWER of the Minnesota House of Representative and the Minnesota Senate (Intervening defendants) (jr) [Edit date 05/16/91] [4:91cv202]
5/16/91	13	Amended Joint ANSWER of the Minnesota House of Representatives and the Minnesota Senate (Intervening defendants) (jr) [4:91cv202]
7/17/91	14	Statement of case as to defendants (jr) [4:91cv202]
7/17/91	15	Statement of case as to intervenor defendants Minnesota Senate and Minnesota House of Representatives (jr) [Entry date 07/18/91] [4:91cv202]

7/17/91	16	Statement of case as to plaintiffs (jr) [Entry date 07/18/91] [4:91cv202]
7/31/91	17	ORDER (Judge Donald R. Lay / 7/23/91) The question of a stay or abstention by the federal court pending legislative action or state court proceedings involving similar issues shall be processed as follows: 1. All motions for stay and motions for this court to abstain pending further proceedings by the state legislature and state court shall be filed, with accompanying briefs, on or before August 2, 1991; 2. All objections to said motions for stay or abstention, with accompanying briefs, shall be filed on or before August 9, 1991; and 3. The movants may file a reply brief on or before August 16, 1991. (c: attys.) (2 pgs) (jr) [4:91cv202]
8/2/91	18	MOTION by intervenors Minnesota Legislature to stay proceedings pending outcome of state court action (before Court of Appeals Chief Judge Donald P. Lay, District Court Judge Harry H. MacLaughlin, and District Court Judge Paul A. Magnuson, and to abstain from redrawing Minnesota legislative districts until 3/1/92 and Minnesota congressional districts until 4/1/92 (no date/time noticed) (3 pgs) (sh) [Entry date 08/05/91] [4:91cv202]
8/2/91	19	APPENDIX A: EXHIBIT to intervenor Minnesota Legislature's motion for the court to abstain [18-1]

[18-2] (sh) [Entry date 08/05/91] [4:91cv202]

8/2/91 20 MEMORANDUM by intervenor Minnesota Legislature in support of their motion to stay proceedings pending outcome of state court action [18-1] and to abstain from redrawing Minnesota legislative districts until 3/1/92 and Minnesota congressional districts until 4/1/92 [18-2] (13 pgs) (sh) [Entry date 08/05/91] [4:91cv202]

8/2/91 21 MOTION by defendant Joan Anderson Growe to stay proceedings until state judiciary takes action with respect to legislative and congressional redistricting (no date/time noticed) (2 pgs) (sh) [Entry date 08/05/91] [Edit date 08/05/91] [4:91cv202]

8/2/91 22 MEMORANDUM by defendant Joan Anderson Growe in support of her motion to stay proceedings until state judiciary takes action with respect to legislative and congressional redistricting [21-1] (7 pgs) (sh) [Entry date 08/05/91] [4:91cv202]

8/2/91 23 MOTION by plaintiffs to stay the separate state court proceedings and enjoining all parties to that action, the three-judge panel, the Minnesota Supreme Court, Court of Appeals and District Courts from conducting any further proceedings (no date/time noticed) (2 pgs) (sh) [Entry date 08/05/91] [Edit date 08/05/91] [4:91cv202]

8/2/91 24 MEMORANDUM by plaintiffs in support of their motion to stay the separate state court proceedings and enjoining all parties to that action, the three-judge panel, the Minnesota Court, Court of Appeals and District Courts from conducting any further proceedings [23-1] (28 pgs) (sh)[Entry date 08/05/91] [4:91cv202]

8/2/91 25 AFFIDAVIT of Bruce D. Willis, regarding attached exhibits,in support of plaintiffs' motion to stay the separate state court proceedings and enjoining all parties to that action,the three-judge panel, the Minnesota Court, Court of Appeals and District Courts from conducting any further proceedings [23-1] (2 pgs, plus exhibits) (sh)[Entry date 08/05/91] [4:91cv202]

8/9/91 26 MEMORANDUM by plaintiffs in opposition to defendants' motions for federal court to abstain or stay [21-1] [18-1][18-2] (17 pgs) (sh) [Entry date 08/12/91] [4:91cv202]

8/9/91 27 MEMORANDUM by Minnesota Legislature in opposition to plaintiffs' motion to stay separate state court proceedings[23-1] (18 pgs) (sh) [Entry date 08/12/91] [4:91cv202]

8/9/91 28 MOTION to intervene by Patricia Cotlow, Phillip Krass, Sharon LaComb, James Stein, Theodore Suss (no judge noticed in motion) (no date/time

noticed) (3 pgs) (sh)[Entry date 08/12/91] [4:91cv202]

8/9/91 29 MEMORANDUM by intervenor-plaintiffs in support of their motion to intervene (3 pgs) (sh) [Entry date 08/12/91][4:91cv202]

8/9/91 30 MEMORANDUM by intervenor-plaintiffs in opposition to plaintiffs' motion to stay [23-1] (6 pgs) (sh) [Entry date 08/12/91] [4:91cv202]

8/9/91 31 OBJECTIONS by defendants, Mark Lundgren, Carver County Auditor, individually and on behalf of all county auditors of the State of Minnesota, to motions for the court to abstain (2 pgs) (sh) [Entry date 08/13/91] [4:91cv202]

8/9/91 32 MEMORANDUM by defendant Joan Anderson Growe in opposition to plaintiffs' motion to stay state court proceedings[23-1] (11 pgs, plus exhibits) (sh) [Entry date 08/13/91][4: 91cv202]

8/16/91 33 ORDER of Reassignment of Companion Case (Judge Harry H. MacLaughlin and David S. Doty / 8/16/91) related case No. 4:91cv603 reassigned to Judge Harry H. MacLaughlin (cc: all counsel) (2 pgs) (sh) [4:91cv202]

8/16/91 34 Plaintiffs' REPLY MEMORANDUM in support of motion to stay separate state court proceedings

[23-1] (7 pgs) (jr) [Entry date 08/19/91] [4:91cv202]

8/16/91 35 REPLY MEMORANDUM of the Minnesota Legislature in support of its motion for the court to abstain [18-2] (11 pgs) (jr) [Entry date 08/19/91] [4:91cv202]

8/21/91 36 MEMORANDUM, OPINION, AND ORDER: (Judge Harry H. MacLaughlin / Judge Donald P. Lay / Judge Paul Magnuson 8/21/91) Re: various motions brought by parties in action (see document #37 for rulings on these motions) (copies obtained by counsel from Judge Harry H. MacLaughlin's chambers) (jr) [Edit date 08/21/91] [4:91cv202]

8/21/91 37 ORDER (Judge Harry H. MacLaughlin / Judge Donald P. Lay / Judge Paul Magnuson 8/21/91) Pursuant to memorandum opinion (document #36) filed this date, this court orders as follows: 1. The motion for intervention by Patricia Cotlow, et al is hereby granted. 2. The action filed by Benson, Dempsey, et al v. Growe, et al. (Court No. 4-91-603) is hereby consolidated with the action entitled Emison, et al v. Growe, et al. (Court File No. 4-91-202). 3. The motion to defer pending further legislative proceeding in the above entitled actions is hereby granted. 4. The motion to abstain pending further state proceedings is hereby denied.

5. The motion to pending state court proceedings is hereby denied. 6. The redistricting plan for the Minnesota House and Minnesota Senate as well as the congressional districts for the State of Minnesota shall be presented to the court on or before January 20, 1990. (copies obtained by counsel from Judge Harry H. MacLaughlin's chambers) (jr) [Edit date 08/21/91] [4:91cv202]

8/21/91 42 INTERVENOR'S COMPLAINT by intervenor-plaintiff Patricia Cotlow, intervenor-plaintiff Phillip Krass, intervenor-plaintiff Sharon LaComb, intervenor-plaintiff James Stein (jr) [Entry date 09/19/91] [4:91cv202]

8/27/91 38 ORDER (Judge Donald P. Lay / 8/27/91) Re: appointment of Joseph Dixon, John Hoyt, and Gregory L. Wilmes as Special Masters (effective 9/3/91) and the duties they will perform, the employing of necessary technical and clerical assistance needed to complete duties, and compensation to these Special Masters and supporting personnel which shall be fixed by the court and shall be taxed to the State of Minnesota at the appropriate time (c: attys.) (copy faxed to Judge Paul A. Magnuson and copy dlvd to Judge Harry H. MacLaughlin's chambers personally) (jr) [Entry date 08/28/91] [Edit date 08/28/91] [4:91cv202]

9/4/91 39 ANSWER by defendant Joan Growe to first amended complaint of Duane Benson, et al (jr) [Entry date 09/05/91][4:91cv202]

9/17/91 40 Minnesota Legislature's ANSWER to the complaint in intervention of intervenors Patricia Cotlow, Sharon LaComb, Phillip Krass, James Stein and Theodore Suss (jr) [Entry date 09/18/91] [4:91cv202]

9/17/91 41 Joint Answer of defendants Joan Growe, Secretary of State of the State of Minnesota and Mark Lundgren, Carver County Auditor, to Complaint in Intervention of Patricia Cotlow, et al (jr) [Entry date 09/18/91] [4:91cv202]

9/17/91 44 Copy of August 25, 1991 Memorandum of Senate Counsel Peter S. Wattson to Senator Lawrence J. Pogemiller and Peter Rodosovich (jr) [Entry date 09/19/91] [Edit date 09/19/91] [4:91cv202]

9/17/91 45 Copy of Senate File 1596/House File 1726 (jr) [Entry date 09/19/91] [Edit date 09/19/91] [4:91cv202]

9/17/91 46 Exhibits relating to copy of Senate File 1596/House File 1726 [45-1] (separate - in expandable folder) (jr) [Entry date 09/19/91] [4:91cv202]

9/17/91 47 "E-size" maps of Senate File 1596/House File 1726 - exhibit to copy of Senate & House File [45-1]. (Separate - in Bin 10 in Exhibit Room) (jr) [Entry date 09/19/91] [4:91cv202]

9/25/91 48 MOTION to intervene as deft. by Patrick O'Connor (no Judge noticed in motion) no time or date noticed (jr) [Entry date 09/26/91] [Edit date 09/26/91] [4:91cv202]

9/25/91 49 Memorandum by applicant intervenor-defendant Patrick O'Connor in support of motion to intervene [48-1] (jr) [Entry date 09/26/91] [Edit date 09/26/91] [4:91cv202]

9/25/91 50 ORDER (Judge Harry H. MacLaughlin / 9/25/91) Re: Establishing Master Docket and The consolidation of 4:91-cv-202 with member case 4:91-cv-603. The master docket shall be maintained under Civil Action Number 4-91-202. (c: attys., Judge Lay, Judge Magnuson, Judge MacLaughlin, and Special Master) (jr) [Entry date 09/27/91] [4:91cv202]

9/25/91 51 COMPLAINT - Summons issued. Assigned to Judge David S. Doty per civil rights list and referred to Magistrate Judge Floyd E. Boline (17 pages). Per cover sheet, another case with same issue is Civil 4-91-202 assigned to Judge MacLaughlin. (this original document removed from 4-91 Civil 603 (previously filed on 8/9/91) &

filed in this civil action pursuant to Court Order re: establishment of Master Docket (document #50)). (jr) [Entry date 09/30/91] [Edit date 09/30/91] [4:91cv202]

9/25/91 52 FIRST AMENDED COMPLAINT [51-1] by plaintiffs, Duane Benson, Terry Dempsey, Delores Hettig, Richard Harmon, David E. Peterson, E. M. Patricia Pidcock, and Frank Ringsmuth (16 pgs, plus exhibits) (this original document removed from 4-91 Civil 603 (previously filed 8/14/91) and filed in this action pursuant to Court order re: establishment of Master Docket (document #50)). (jr) [Entry date 09/30/91] [Edit date 09/30/91] [4:91cv202]

9/25/91 53 RETURN OF SERVICE (Summons) executed upon defendant Joan Anderson Growe on 8/14/91 (this original document removed from 4-91 Civil 603 (previously filed 8/15/91) and filed in this action pursuant to Court order re: establishment of Master Docket (document #50)). (jr) [Entry date 09/30/91] [Edit date 09/30/91] [4:91cv202]

10/1/91 54 Intervening pltfs' proposed criteria for redistricting (5 pgs) (jr) [4:91cv202]

10/1/91 55 Memorandum by intervening defts, the Legislature, regarding criteria for legislative and congressional redistricting plans. (jr) [4:91cv202]

10/1/91 56 Exhibits to the Memorandum of the MN Legislature [55-1] regarding criteria for legislative and congressional redistricting plans (jr) [4:91cv202]

10/1/91 57 Pltfs' proposed criteria for redistricting (jr) [Entry date 10/02/91] [Edit date 10/02/91] [4:91cv202]

10/1/91 58 Secretary of State Joan Growe's proposed criteria for redistricting plans (6 pgs) (sh) [Entry date 10/02/91] [4:91cv202]

10/2/91 59 ORDER (Judge Harry H. MacLaughlin / 10/2/91) that the motion of the Hennepin County Auditor, Patrick 0'Connor, individually and on behalf of all county auditors of the State of Minnesota, is hereby granted. [48-1] (cc: all counsel) (3 pgs) (sh) [4:91cv202]

10/2/91 76 ANSWER by intervenor-defendant Patrick O'Connor, Hennepin County Auditor to amended complaint of James Emison, et al (jr) [Entry date 10/23/91] [4:91cv202]

10/2/91 77 ANSWER of Patrick O' Connor, Hennepin County Auditor, to the first amended complaint of Duane Benson, et al (jr) [Entry date 10/23/91] [4:91cv202]

10/5/91 60 ORDER (United States Circuit Judge Donald P. Lay / 10/4/91) Re: documents that must be and

also that may be filed with the Court after the Court reviewed suggested criteria for reapportionment submitted by counsel. The three-judge court will hold a hearing ret. 10/11/91 at 9:00 a.m. in Court Room #1 on the fifth floor of the Federal Court Building, 316 N. Robert St., St. Paul, MN for the purpose of hearing arguments on the proposed criteria for reapportionment. The Court intends to issue its opinion on the criteria to be utilized for reapportionment no later than 10/22/91. (copies mailed to counsel from St. Paul Clerk's office) (jr) [Entry date 10/07/91] [4:91cv202]

10/10/91 61 Memorandum of the Minnesota Legislature in response to criteria previously submitted to the Court [54-1] [55-1] [57-1] [58-1] (jr) [Entry date 10/11/91] [4:91cv202]

10/10/91 65 Plaintiffs' responses to redistricting criteria proposed by other parties [54-1] [55-1] [58-1] (jr) [Entry date 10/11/91] [4:91cv202]

10/10/91 66 Intervening-plaintiffs' response to pltfs' proposed criteria for redistricting [57-1] (jr) [Entry date 10/11/91] [4:91cv202]

10/10/91 67 MOTION by intervenor-plaintiff to vacate order of October 4, 1991 (no Judge noticed in motion) no date or time noticed (jr) [Entry date 10/11/91] [4:91cv202]

10/10/91 68 Memorandum by intervenor-plaintiffs' in support of motion to vacate order of October 4, 1991 [67-1] (jr) [Entry date 10/11/91] [4:91cv202]

10/10/91 69 MOTION by plaintiffs Duane Benson, et al (pltfs' in 4-91-603) for summary judgment (no Judge noticed in motion) no date or time noticed (jr) [Entry date 10/15/91] [4:91cv202]

10/10/91 70 AFFIDAVIT of Terry Dempsey regarding motion of pltfs' Duane Benson, et al for summary judgment [69-1] (jr) [Entry date 10/15/91] [4:91cv202]

10/10/91 71 Memorandum by plaintiffs' Duane Benson, et al supporting motion for summary judgment [69-1] (jr) [Entry date 10/15/91] [4:91cv202]

10/10/91 72 RESPONSE by plaintiffs Duane Benson et al to memorandum to criteria proposed by deft., Joan Growe, Intervening pltfs Cotlow, et al., and intervening deft., MN Legislature [54-1] [55-1] [58-1] (jr) [Entry date 10/15/91] [4:91cv202]

10/11/91 73 AFFIDAVIT of Governor Arne H. Carlson regarding response [72-1] by the Benson pltfs, et al to criteria proposed by deft., Growe, Intervening pltfs Cotlow, et al., and Intervening deft., MN Legislature (jr) [Entry date 10/15/91] [4:91cv202]

10/11/91 75 RESPONSE by intervenor-defendant, Patrick O'Connor, County Auditor, to proposed criteria (jr) [Entry date 10/22/91] [Edit date 10/22/91] [4:91cv202]

10/21/91 74 ORDER (Judge Harry H. MacLaughlin/Judge Paul Magnuson/Judge Donald P. Lay) Re: criteria to be consistently followed when planning the apportioning of the Minnesota congressional and legislative districts. (c: attys) (jr) [4:91cv202]

10/31/91 78 LETTER to court from pltfs (4:91cv603) regarding memorandum opinion and order dated 8/21/91 in which the Court ordered the parties to submit, if they choose, their suggested legislative and congressional plans for reapportionment; pltfs advise the Court that they will not be submitting said plans in their specific case 4:91cv603, later consolidated in master case 4:91cv202 (2 pgs) (sh) [Entry date 11/04/91] [4:91cv202]

10/31/91 79 Hennepin County Auditor's Proposed Legislative Plan (4 pgs) (sh) [Entry date 11/04/91] [4:91cv202]

10/31/91 80 Pltfs' Report on Congressional Redistricting Plans (separate) (sh) [Entry date 11/04/91] [4:91cv202]

10/31/91 81 Pltfs' Report on Legislative Redistricting Plans (separate) (sh) [Entry date 11/04/91] [4:91cv202]

10/31/91 82 Maps of Pltfs' Proposed Congressional Redistricting and Maps of Pltfs' Proposed Legislative Redistricting (separate - in Exhibit Room, Bin 10) (sh) [Entry date 11/04/91] [4:91cv202]

10/31/91 83 The Minnesota Legislature's Memorandum Regarding Its Legislative and Congressional Redistricting Plans (8 pgs) (sh) [Entry date 11/04/91] [4:91cv202]

10/31/91 84 Senate File 1597/House File 1728 and Exhibits (separate) (sh) [Entry date 11/04/91] [4:91cv202]

10/31/91 85 E-size map regarding Senate File 1597/House File 1728 -1992 Congressional Districts (separate) (sh) [Entry date 11/04/91] [4:91cv202]

10/31/91 87 Letter RESPONSE by defendant Joan Anderson Growe in support of the Legislature's proposed congressional redistricting plan [83-1] [84-1] [85-1] (1 pg) (sh) [Entry date 11/05/91] [4:91cv202]

11/4/91 86 Intervening Pltfs' Proposed Plans of Legislative and Congressional Redistricting (9 pgs, plus exh) (sh) [4:91cv202]

11/12/91 88 Hennepin County Auditor Response to Proposed Plans (11 pgs) (sh) [4:91cv202]

11/12/91 89 Letter RESPONSE by pltfs Benson, Dempsey, et al. to proposed plans (2 pgs) (sh) [Entry date 11/13/91] [4:91cv202]

11/12/91 90 Pltfs' memorandum RESPONSE regarding redistricting plans (25 pgs) (sh) [Entry date 11/13/91] [4:91cv202]

11/12/91 91 Memorandum of the Minnesota Legislature in RESPONSE to the Emison Pltfs' proposed legislative and congressional redistricting plans (27 pgs) (sh) [Entry date 11/13/91] [4:91cv202]

11/12/91 92 Secretary of State Joan Growe's RESPONSE to plaintiffs' proposed redistricting plans (6 pgs) (sh) [Entry date 11/13/91] [4:91cv202]

11/12/91 93 Letter RESPONSE by intervenor-plaintiffs to the proposed congressional redistricting plan of the pltfs Emison, et al. (3 pgs) (sh) [Entry date 11/13/91] [4:91cv202]

11/27/91 94 ORDER (Chief Judge Donald P. Lay, U. S. Circuit Judge, Sitting by Special Designation / 11/27/91) setting hearing of motion for summary judgment of pltfs, Duane Benson, et al., in courtroom number 1, fifth floor, 316 N. Robert St., St. Paul, [69-1] on 12/4/91 at 2:00 p.m. (cc: all counsel) (3 pgs) (sh) [Entry date 11/29/91] [4:91cv202]

12/4/91 95 Memorandum in opposition by intervenors, The Minnesota Legislature (The House and The Senate) to Benson Plaintiffs' motion for summary judgment [69-1] (jr) [4:91cv202]

12/4/91 96 MEMORANDUM by intervening plaintiffs in opposition to Benson plaintiffs' motion for summary judgment [69-1] (3 pgs) (sh) [4:91cv202]

12/4/91 97 MEMORANDUM by defendant Secretary of State Joan Anderson Growe in opposition to Benson plaintiffs' motion for summary judgment [69-1] (6 pgs) (sh) [4:91cv202]

12/5/91 98 ORDER of Stay of All Proceedings Pending Before the Minnesota Special Redistricting Panel in Cotlow v. Growe, No. C8-91-985 (Judges Lay, MacLaughlin, and Magnuson): Enjoining all proceedings in Cotlow v. Growe, No. C8-91-985, pending before the State of Minnesota Special Redistricting Panel. All previous orders of the above Special Redistricting Panel and any future orders that panel may issue relating to the adoption of any state redistricting plan or congressional redistricting plan are hereby stayed until further order of this court. Each of the parties and their counsel in the federal proceeding are hereby enjoined from attempting to enforce or implement any order of the above Minnesota Special Redistricting Panel which has proposed adoption of a reapportionment plan relating to

state redistricting or congressional redistricting until further order of this court. Each party shall be given notice forthwith of this court's order. A copy of this court's order shall be served on the Minnesota Special Redistricting Panel by serving the Clerk of the Appellate Courts, Minnesota Judicial Center. Notice of this order shall also be served upon the Governor of the State of Minnesota, Arnold Carlson, and Hubert Humphrey III, Attorney General of the State of Minnesota. (cc: all counsel) (22 pgs) (sh) [4:91cv202]

12/5/91 99 JUDGMENT entered (see docket entry #98) (1 pg) (sh) [4:91cv202]

12/6/91 100 Plaintiffs' memorandum of law concerning the unconstitutionality of chapter 246 (jr) [Entry date 12/16/91] [4:91cv202]

12/13/91 101 NOTICE OF APPEAL by Patricia Cotlow, Phillip Krass, Sharon LaComb, James Stein and Theodore Suss, Intervening plaintiffs; Joan Growe, Secretary of State of the State of Minnesota, Defendant; Patrick O'Connor, Hennepin County Auditor of the State of Minnesota, Intervening defendant; and the Seventy-seventh Minnesota State House of Representative and the Seventy-seventh Minnesota State Senate, Intervening Defendants, to the Supreme Court from the Order of Stay and the Judgment entered in this action on 12/5/91 [98-1] [99-1] (jr) [Entry date 12/16/91] [4:91cv202]

12/16/91 102 RESPONSE to proposed plans by City of Delano and Carver County Auditor (10 pgs) (sh) [Entry date 12/17/91] [4:91cv202]

1/3/92 105 ORDER (Chief Judge Lay / 1/3/92) reschedule hearing set for 1/27/92; hearing to be held on 2/4/92 at 9:30 a.m., fifth floor, courtroom number one, 316 N. Robert St., St. Paul(cc: all counsel) (3 pgs) (sh) [4:91cv202]

1/10/92 106 Memorandum RESPONSE by Hennepin County Auditor to Court's Inquiry (9 pgs) (sh) [4:91cv202]

1/10/92 107 MEMORANDUM by plaintiffs' regarding the unfairness of the legislature's redistricting plans (21 pgs + exhibits) (jr) [Entry date 01/13/92] [4:91cv202]

1/10/92 108 Brief by intervening plaintiffs' regarding "unfairness" (8 pgs)' (jr) [Entry date 01/13/92] [4:91cv202]

1/13/92 109 Secretary of State Joan Growe's response to court's inquiry [105-2] (jr) [4:91cv202]

1/14/92 110 AFFIDAVIT of Lawrence J. Pogemiller (this document is a copy; however, pursuant to amendment to F.R.Civ.P.5 filed copy) (jr) [Entry date 01/15/92] [4:91cv202]

1/14/92 111 AFFIDAVIT of Peter Rodosovich (this document is a copy; however, pursuant to amendment to F.R.Civ.P.5 filed copy) (jr) [Entry date 01/15/92] [4:91cv202]

1/14/92 112 AFFIDAVIT of Peter S. Wattson (jr) [Entry date 01/15/92] [4:91cv202]

1/14/92 113 AFFIDAVIT of Craig Lindeke (this document is a copy; however, pursuant to amendment to F.R.Civ.P.5 filed copy) (jr) [Entry date 01/15/92] [4:91cv202]

1/15/92 114 The Minnesota Legislature's memorandum regarding the legislative history of Chapter 246 (8 pgs) (jr) [Entry date 01/16/92] [4:91cv202]

1/15/92 115 AFFIDAVIT No. 2 of Peter S. Wattson (separate in expandable folder) (jr) [Entry date 01/16/92] [4:91cv202]

1/15/92 116 Exhibit 10 to Affidavit No. 2 of Peter S. Wattson [115-1] (located in exhibit room - bin 10 - in Minneapolis Clerk's office) (jr) [Entry date 01/16/92] [4:91cv202]

1/15/92 117 Exhibit 11 to affidavit No. 2 of Peter S. Wattson [115-1] (located in exhibit room - bin 10 - in Minneapolis Clerk's office) (jr) [Entry date 01/16/92] [Edit date 01/16/92] [4:91cv202]

1/17/92 118 REPLY memorandum by plaintiff Duane Benson, plaintiff Terry Dempsey, plaintiff Delores Hettig, plaintiff Richard Harmon, plaintiff David E Peterson, plaintiff Frank Ringsmuth, plaintiff E M Patricia Pidcock to other parties' January 10th responses to Court's January 3, 1992 inquiry of parties [108-1] (jr) [Entry date 01/21/92] [4:91cv202]

1/17/92 119 AFFIDAVIT of State Representative Jerry Knickerbocker regarding amendment to Senate File 1597 [84-1] (separate -in expandable folder) (jr) [Entry date 01/21/92] [4:91cv202]

1/17/92 120 Map Re: amendment to Senate file 1597 - proposed congressional district - January session 1992 (separate -located in exhibit room in Minneapolis Clerk's office - Bin 10) (jr) [Entry date 01/21/92] [Edit date 01/21/92] [4:91cv202]

1/17/92 121 The Minnesota Legislature's memorandum in response to pltfs' memorandum regarding the unfairness of the Legislature's redistricting plans [107-1] (jr) [Entry date 01/21/92] [4:91cv202]

1/17/92 122 Memorandum of deft. intervenor Hennepin County (Patrick O' Connor, Auditor) in response to pltfs' memorandum (jr) [Entry date 01/21/92] [Edit date 01/21/92] [4:91cv202]

1/17/92 123 Emison Plaintiffs' reply memorandum regarding unfairness issues (jr) [Entry date 01/21/92] [4:91cv202]

1/17/92 125 MOTION by intervening-plaintiffs for reconsideration of August 21, 1991 order, and to stay its hand in the within action until the Minnesota State judiciary has completed its action with respect to congressional and legislative redistricting for the State of Minnesota (no Judge noticed in motion) no date or time noticed (jr) [Entry date 01/22/92] [4:91cv202]

1/17/92 126 Memorandum by intervenor-plaintiffs' in support of motion for reconsideration of August 21, 1991 order and for stay [125-1] (jr) [Entry date 01/22/92] [4:91cv202]

1/21/92 124 Secretary of State Joan Growe's response to pltfs' memorandum regarding Gerrymandering (jr) [4:91cv202]

1/22/92 127 County of Wright and Carver County Auditor's response to proposed congressional redistricting plans [86-1] [79-1] [54-1] [38-1] [57-1] (jr) [Entry date 01/23/92] [4:91cv202]

1/30/92 129 MEMORANDUM by plaintiffs in opposition to intervening plaintiffs' motion for reconsideration and stay [125-1] [125-2] (10 pgs) (sh) [Entry date 01/31/92] [4:91cv202]

1/30/92 130 AFFIDAVIT of Lois Klostreich opposing intervening pltfs' motion for reconsideration and for stay [125-1] [125-2] (3 pgs, plus exh) (sh) [Entry date 01/31/92] [4:91cv202]

1/31/92 132 ORDER (Judge Paul A. Magnuson / 1/31/92) that the hearing scheduled for Tuesday, February 4, 1992, is canceled. (c: attys.) (jr) [Entry date 02/04/92] [4:91cv202]

2/11/92 133 ORDER (Circuit Judge Donald P. Lay / 2/11/92) That the motion filed on behalf of the intervening plaintiffs for reconsideration of stay and for other relief is hereby denied [125-1] [125-2] (cc: all counsel) (2 pgs) (gb) [Entry date 02/13/92] [4:91cv202]

2/19/92 134 MEMORANDUM, OPINION, AND ORDER: (U. S. Circuit Judge Donald P. Lay & Judge Paul A. Magnuson dated 2/19/92 Judge Harry H. MacLaughlin dissents) that deft. Joan Growe, the duly elected & qualified Secretary of State of the State of MN, in her official capacity, as the chief election officer of the State of MN & all those acting by & under her authority, accept filings & conduct elections only in accordance with the provisions of this order, & in conformity with the election statutes of the State of MN which are not inconsistent therewith. Deft. Growe & those acting by & under her authority are enjoined from accepting filings otherwise than in conformity with

this order, or from declaring the results of any such election held otherwise than in confirmity with the order of this court, except as may be provided by law for the appeal of this order to the Supreme Court of the United States. Jurisdiction is retained for the purpose of making any further orders deemed necessary to insure the effectuation of our order adopting a state legislative redistricting plan and a congressional redistricting plan for the State of MN, & this order permanently enjoining interference with said redistricting plans. Appropriate orders taxing costs against Joan Growe, Secretary of State of the State of MN, will be entered for Masters' fees & expenses, assistants' fees & expenses, printing expenses, computer expenses & miscellaneous supplies & equipment. Let Judgment be Entered Accordingly. (cc: all counsel) (67 pgs+exhibits) (Separate). (cf) [4:91cv202]

2/19/92 135 JUDGMENT: (cc: all counsel). (1pg) (cf) [4:91cv202]

2/26/92 136 NOTICE OF APPEAL to the Supreme Court of the United Statesb by intervenor-defendant Patrick O' Connor from judgment entered 2/19/92 [134-2] (4 pgs) (sh) [4:91cv202]

2/28/92 137 MOTION by defendant Joan Anderson Growe, intervenor deft. MN House of Representatives, intervenor deft. MN State Senate, intervening

defts', Patrick O' Connor, Hennepin County Auditor, individually and on behalf of all county auditors of the State of Minnesota, Intervening Defendant, and Patrick Cotlow, Phillip Krass, Sharon LaComb, James Stein and Theodore Suss, Intervening Plaintiffs for stay of judgment pending appeal (no Judge noticed in motion) no time or date noticed (jr) [Entry date 03/03/92] [4:91cv202]

2/28/92 138 Memorandum of law of Joan Growe, deft.; The Minnesota State House of Representatives and the Minnesota State Senate, Intervening defts.; Patrick O' Connor, Hennepin County Auditor, intervening deft.; Patrick Cotlow, Phillip Krass, Sharon LaComb, James Stein and Theodore Suss, intervening pltfs' in support of motion for stay of enforcement of judgment pending appeal [137-1] (jr) [Entry date 03/03/92] [4:91cv202]

2/28/92 139 Affidavit of Elaine V. Voss, Deputy Secretary of State of the State of Minnesota supporting motion of various individuals to stay enforcement of judgment pending appeal thus supporting memorandum regarding same [138-1] (jr) [Entry date 03/03/92] [Edit date 03/03/92] [4:91cv202]

2/28/92 140 AFFIDAVIT of Todd Otis supporting motion of various individuals for stay of judgment pending appeal [137-1] thus supporting memorandum regarding same [138-1] (jr) [Entry date 03/03/92] [4:91cv202]

2/28/92 141 Exhibits supporting motion of various individuals to stay enforcement of judgment pending appeal [137-1] thus supporting memorandum regarding same [138-1] (jr) [Entry date 03/03/92] [4:91cv202]

2/28/92 142 AFFIDAVIT of Mary Ann McCoy supporting motion of various individuals for stay of enforcement of judgment pending appeal [137-1] thus supporting memorandum regarding same [138-1] (jr) [Entry date 03/03/92] [4:91cv202]

3/2/92 143 CERTIFIED COPY of judgment from the United States Supreme Court that the appeal filed in district court on 12/13/91 is dismissed as moot since the order of this Court dated 1/10/92, vacated the order from which the appeal was taken.(Notice to Counsel) (1 pg) (lb) [Entry date 03/04/92] [4:91cv202]

3/3/92 144 MEMORANDUM by plaintiffs and defendant Lundgren in opposition to motion to stay enforcement of judgment pending appeal (27 pgs) (sh) [Entry date 03/05/92][4:91cv202]

3/3/92 145 AFFIDAVIT of Bruce D. Willis, regarding attached exhibits,opposing Growe's motion for stay of judgment pending appeal [137-1] (3 pgs, plus exh) (sh) [Entry date 03/05/92][4:91cv202]

3/3/92 146 AFFIDAVIT of Robert C. Weinholzer opposing Growe's motion for stay of judgment pending appeal [137-1] (2 pgs) (sh)[Entry date 03/05/92] [4:91cv202]

3/9/92 147 ORDER (Judge Donald P. Lay and Judge Paul A. Magnuson/3/9/92) that the motion of the deft. intervenors to stay the effect of our order dated 2/19/92 is denied - Judge Harry H. MacLaughlin dissents from this order [137-1] (c:attys.) (jr) [Entry date 03/11/92] [4:91cv202]

3/20/92 148 MOTION by Benson plaintiffs' for award of costs (no Judge noticed in motion), including attorney fees no time or date noticed in motion (jr) [Entry date 03/24/92] [4:91cv202]

3/20/92 149 Memorandum by Benson plaintiffs' in support of motion for costs including attorney fees [148-2] (jr) [Entry date 03/24/92] [4:91cv202]

3/20/92 150 AFFIDAVIT of Joseph T. O'Neill supporting the Benson Pltfs' motion for award of costs including [148-1] attys' fees [148-2] thus supporting memorandum regarding same [149-1] (jr) [Entry date 03/24/92] [4:91cv202]

3/20/92 151 MOTION by Emison plaintiffs' for attorney fees, and for costs (no Judge noticed in motion), in the alternative to stay the period for application for award of attys' fees and costs no time or date

notice in motion (jr) [Entry date 03/24/92] [4:91cv202]

3/20/92 152 Memorandum of law supporting Emison pltfs' motion for award of attys' fees and costs [151-1] [151-2] (jr) [Entry date 03/24/92] [4:91cv202]

3/20/92 153 Affidavit of Mark B. Peterson in support of Emison pltfs' motion for attys' fees [151-1] thus supporting memorandum regarding same [152-1] (jr) [Entry date 03/24/92] [4:91cv202]

3/31/92 154 MEMORANDUM by defendant Joan Anderson Growe in opposition to dfts' motion for attorney fees and costs [151-1] [148-1] (2 pgs) (sh) [4:91cv202]

4/1/92 155 ORDER (Judge Paul A. Magnuson / 3/31/92) taxing special master's fees & expenses as follows: the State of Minnesota is to pay to the Clerk of the United States District Court the sum of $157,980.33 as and for Special Masters' fees and expenses incurred in the above captioned action to be disbursed among Special Masters as set forth in this order. IT IS FURTHER ORDERED that the Clerk deposit said monies into the Court Registry Fund until further order of the court. Payment shall be made thirty (30) days from the date of this order. (c: attys.) (jr)[Entry date 04/02/92] [4:91cv202]

4/3/92 156 ORDER (Judge Paul A. Magnuson / 4/2/92) that technical changes be made to the Court's Order dated 2/19/92 (cc: all counsel) (3 pgs) (sh) [4:91cv202]

4/3/92 157 CERTIFIED COPY OF AN ORDER FROM THE UNITED STATES SUPREME COURT that the statement of jurisdiction in this case having been submitted and considered by the Court in this case, in this case probable jurisdiction is noted. (cc: all counsel) (lb) [Entry date 04/08/92] [4:91cv202]

4/21/92 158 ORDER (Judge Paul A. Magnuson / 4/20/92) that the Court's Order taxing special master's fees and expenses dated 3/31/92 is amended by adding $765.38 to the fees and expenses due to Joe Dixon; the State of Minnesota shall pay to the Clerk of the United States District Court, the sum of $158,055.66 of special master's fees and expenses; the clerk shall deposit said monies into the Court Registry Fund until further order of the Court; payment shall be made within 30 days from the date of this Order (cc: all counsel) (3 pgs) (sh) [4:91cv202]

4/24/92 -- RECEIPT #101302 in the amount of $157,980.33 placed in Registry Fund (sh) [Entry date 04/28/92] [4:91cv202]

4/28/92 -- RECEIPT #101367 in the amount of $765.38 placed in Registry Fund (sh) [4:91cv202]

5/1/92 159 ORDER (Judge Paul A. Magnuson / 4/25/92) that the Court's Order dated 4/20/92 is amended. The state of Minnesota shall pay to the Clerk of the U.S. District Court the sum of $158,745.71 for special master's fees and expenses. The Clerk shall deposit said monies into the Court Registry Fund until further order of the Court. Payment shall be made within 30 days from the date of this order. (cc: attys.) (3 pgs) (jr) [Entry date 05/04/92] [4:91cv202]

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

James Emison, Judy Fairbanks, Marie Iverson, Ken Dean, Steve Castillo, Lew Freeman, and Yao Lo, individually and on behalf of all Citizens and Voters of the State of Minnesota similarly situated,

Plaintiffs,

and

Patricia Cotlow, Phillip Krass, Sharon LaComb, James Stein, and Theodore Suss, individually and on behalf of all Citizens of Minnesota similarly situated,

Intervening Plaintiffs,

Civil File No. 4-91-202

ORDER

v.

Joan Growe, Secretary of State of Minnesota; and Dale G. Folstad, Hennepin County Auditor, individually and on behalf of all County Auditors of the State of Minnesota,

Defendants,

and

The Seventy-seventh Minnesota State House of Representatives and the Seventy-seventh Minnesota State Senate,

Defendant-Intervenors,

and

Patrick O'Connor, Hennepin County Auditor, individually and on behalf of all County Auditors of the State of Minnesota,

Defendant-Intervenor.

AND

Duane Benson, Terry Dempsey, Delores Hettig, Richard Harmon, David E. Peterson, E.M. Patricia Pidcock, and Frank Ringsmuth,

Plaintiffs,

v.

Joan Growe, Secretary of State of the State of Minnesota,

Defendant,

and

Patrick O'Connor, Hennepin County Auditor, individually and on behalf of all County Auditors of the State of Minnesota,

Defendant-Intervenor.

IT IS HEREBY ORDERED that the following technical changes be made to the court's order dated February 19, 1992:

Page	Change
12	Fourth line down: "and" should be "an".
13	Eighth line down: "S.F." should be "Senate File".
20	Quote from Gingles at the bottom (sixth line up): delete the first "also" after "We".
26	Delete first "total" in first sentence of the new paragraph (twelve lines from the top).
29	Third line down: "defendant intervenor" should be "defendant intervenors".
31	Footnote 40: Delete "senate" in the last line.
36	Second line up from bottom (not counting footnote): Capitalize the word "governor".
38	Fourth line up from bottom: Cite should read "Minn. H.R. Con. Res. . . . ", not just "H.R. Con. Res. . .".
40	Second full paragraph, fourth line down: Insert a comma after "i.e.".
41	Last paragraph, fourth line up from bottom: "(1.60 persons)" should be "(508 persons)".
45	Footnote 48: ":" after "gerrymander" should be "!", and "Watson" should be "Wattson".
46	Fourth line up from bottom (not counting footnote): Should read "Robins & Eller", not "Robins & Miller".

48 The "D." appearing before the heading "Congressional Plan" should be deleted.

48 Footnote 51, ten lines up from bottom: Insert a period after the first elipse within the quote.

50 Fourth and eighth lines up from bottom: "greater" should be capitalized both times.

51 First full paragraph, fifth line down: Insert a period after "IV.B.".3

The parties are advised that this is the final form of our decision.

Dated: April 2, 1992.

BY THE COURT

/s/
Paul A. Magnuson
United States District Court Judge

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1991

JOAN GROWE, SECRETARY OF THE STATE OF MINNESOTA; THE SEVENTY-SEVENTH MINNESOTA STATE HOUSE OF REPRESENTATIVES AND THE SEVENTY-SEVENTH MINNESOTA STATE SENATE; PATRICK O'CONNOR, HENNEPIN COUNTY AUDITOR, INDIVIDUALLY AND ON BEHALF OF ALL COUNTY AUDITORS OF THE STATE OF MINNESOTA; AND PATRICIA COTLOW, PHILLIP KRASS, SHARON LACOMB, JAMES STEIN, AND THEODORE SUSS, INDIVIDUALLY AND ON BEHALF OF ALL CITIZENS OF MINNESOTA SIMILARLY SITUATED,

Appellants,

vs.

JAMES EMISON, JUDY FAIRBANKS, MARIE IVERSON, KEN DEAN, STEVE CASTILLO, LEW FREEMAN, AND YAO LO, INDIVIDUALLY AND ON BEHALF OF ALL CITIZENS AND VOTERS OF THE STATE OF MINNESOTA SIMILARLY SITUATED; DUANE BENSON, TERRY DEMPSEY, DELORES HETTIG, RICHARD HARMON, DAVID E. PETERSON, E.M.

PATRICIA PIDCOCK, AND FRANK RINGSMUTH; AND MARK LUNDGREN, CARVER COUNTY AUDITOR, INDIVIDUALLY AND ON BEHALF OF ALL COUNTY AUDITORS OF THE STATE OF MINNESOTA,

Appellees.

On Appeal From The United States District Court
For The District of Minnesota

AFFIDAVIT OF JOAN ANDERSON GROWE, SECRETARY OF STATE OF THE STATE OF MINNESOTA

Joan Anderson Growe, being duly sworn, deposes and says:

1. I am the duly elected Secretary of State of the State of Minnesota.

2. Under the provisions of Minn. Stat. chapters 200 through 211, I am charged with the duty of keeping records of state elections, giving notice of state elections, receiving filings of candidates for state elective offices, preparing ballots and instructions to voters, distributing copies of the election laws of the State of Minnesota, receiving election returns, furnishing blank election ballots and forms to the several county auditors, furnishing certificates of election to successful legislative candidates in multi-county districts and to successful candidates for election to the United States Congress, serving on the State Canvassing Board, and various other election duties.

3. In order to perform my election duties, I must

know the legislative and congressional districts prescribed by law by the State of Minnesota. Preparations for the 1992 elections has been particularly difficult because of the uncertainty surrounding the appropriate districting of the state legislature. The Minnesota Legislature enacted 1991 Minn. Laws ch. 246 ("Chapter 246") on May 29, 1991, which was then vetoed by the governor. The governor's veto was declared invalid in Seventy-Seventh Minnesota State Senate v. Carlson, Court File No. C3-91-7547 (Minn. Dist. Ct., 2d Judicial Dist., August 2, 1991). Since that time I, along with local election officials, have proceeded with preparations for the 1992 elections based on the districts established in Chapter 246.

4. On January 30, 1992, the Special Redistricting Panel appointed by the Minnesota Supreme Court entered judgment on a legislative redistricting plan embodied in the Findings of Fact. Conclusions of Law, and Order for Judgment on Legislative Redistricting. This plan was based on Chapter 246 and corrected any defects in the law which the court found to be violative of the Minnesota and United States Constitutions.

5. On January 31, 1992, my counsel, John R. Tunheim, along with Hennepin County Attorney Michael Freeman, sent out a letter instructing local units of government that the state court's legislative redistricting plan had become final on January 30, 1992, and that statutory requirements for local redistricting had therefore begun to run. Exhibit 1, attached. The letter informed local units of government that city wards and precinct boundaries must be drawn by March 30, 1992, and that all other election districts must be drawn by April 20, 1992. Id. Minnesota law requires that local districts be based on legislative district boundaries. See Minn. Stat. § 204B.135 and 204B.14 (Supp. 1991).

6. My office and many local units of government have made considerable efforts and incurred considerable expenses going forward with local redistricting. These efforts of the state and local units of government involved in these redistricting efforts are described in paragraphs 10 to 15 below.

7. On February 19, 1992, the federal district court issued its Memorandum Opinion and Order establishing both legislative and congressional redistricting plans for the State of Minnesota. The federal court's order enjoins me and others acting under my authority from accepting filings and conducting elections except in accordance with the federal court's plan. The legislative districts created by the federal court are completely different than the districts created by the state court. It is impossible to hold an election based on districts which comply with both the state court and federal court plans.

8. If the federal court's order remains in place, a great deal of the effort and expense that has been invested into local redistricting pursuant to the state court's order will be wasted because local units of government will again have to redistrict according to the federal court plan. The effort involved in this second round of redistricting efforts is described in paragraphs 16 to 19 below.

9. While two conflicting legislative redistricting plans are in effect, the state, local units of governments, candidates for office, and Minnesota voters are subject to confusion and uncertainty about the conduct of the 1992 legislative and congressional elections.

EFFORTS ALREADY EXPENDED

10. The Office of the Secretary of State has actively been involved in the redistricting process since June, 1991. During

this period, my office has provided up-to-date information to local election officials on the progress of legislative redistricting activities on a regular basis. My office has responded to literally hundreds of inquiries from counties, municipalities, and school districts concerning the progress of the redistricting process. I estimate that the Office of the Secretary of State has spent over $75,000 dollars preparing for the 1992 elections based on Chapter 246 and the state court's legislative redistricting plan.

11. We have also been engaged in a number of other activities to facilitate the exchange of redistricting data from the state to local election officials. The following is a summary of the activities that have been completed or initiated since the summer of 1991.

a. Census data for use in local redistricting was mailed to each county auditor.

b. Rules were proposed and adopted to govern aspects of the local redistricting process.

c. Training sessions for local election officials were conducted at four locations during the first part of September, 1991, to provide instruction for administration of the local redistricting process.

d. Maps illustrating census tracts and blocks were distributed to each county auditor to be used for redistricting.

e. An agreement was made with the Legislative Coordinating Commission to exchange redistricting data between the counties and

municipalities, the Secretary of State's Office, and the legislative redistricting office as part of my office's local redistricting project.

f. Contract staff have been hired to implement system design and computer programming functions of the local redistricting project.

g. Maps to be used by cities to illustrate precinct and ward boundaries after adoption of the state-court-ordered legislative plan were mailed to cities with more than one precinct.

h. My office reviewed the status of redistricting activities at county auditors' conferences in Detroit Lakes and Minnetonka.

12. I am also aware that the Hennepin County Attorney has mailed copies of the metes and bounds descriptions of the state-court-ordered legislative redistricting plan to each county auditor.

13. There are 4,131 election precincts in Minnesota. There are 87 county auditors and 275 cities involved in redistricting in Minnesota. The county auditors and city officials have expended considerable efforts to be ready for the 1992 elections. On February 20, 1992, I conducted a survey of all the counties and cities to determine what they have done thus far toward redistricting.

14. The counties' response indicated the following progress has been made toward adopting a county commissioner plan based on the legislative district boundaries established in

the state court's January 30, 1992, judgment:

AITKIN: Draft plan in progress.

ANOKA: Plan complete except for public hearings; public hearings scheduled for April 14, 1992.

BECKER: Plan complete except for public hearings; public hearings scheduled for March 17, 1992.

BELTRAMI: Plan complete except for public hearings; public hearings scheduled for March 16, 1992.

BENTON: Plan complete except for public hearings; public hearings scheduled for March 3, 1992.

BIG STONE: Plan complete except for public hearings; public hearings scheduled for March 17, 1992.

BLUE EARTH: Plan complete except for public hearings; public hearings scheduled for March 23. 1992.

BROWN: Plan nearly complete; waiting on cities.

CARLTON: Draft plan in progress.

CARVER: Draft plan in progress.

CASS: Plan complete except for public hearings; public hearings scheduled for April 7, 1992.

CHIPPEWA: No change to current plans expected; no redistricting required.

CHISAGO: Draft plan in progress.

CLAY: Plan complete except for public hearings; public hearings scheduled for March 11, 1992.

CLEARWATER: Plan complete except for public hearings; public hearings scheduled for March 17, 1992.

COOK: Plan complete except for public hearings; public hearings scheduled for April 14, 1992.

COTTONWOOD: Draft plan in progress.

CROW WING: Draft plan in progress.

DAKOTA: Plan nearly complete; waiting on cities.

DODGE: Plan nearly complete; waiting on City of Kasson.

DOUGLAS: Plan complete except for public hearings; public hearings scheduled for April 14, 1992.

FARIBAULT: Draft plan in progress.

FILLMORE: Draft plan in progress.

FREEBORN: Draft plan in progress.

GOODHUE: Plan complete except for public hearings; public hearings scheduled for February 28, 1992.

GRANT: Plan adopted.

HENNEPIN: Plan complete except for public hearings; public hearings scheduled for March 8 and 26, 1992.

HOUSTON: Draft plan in progress.

HUBBARD: No changes in current districts expected: no redistricting required.

ISANTI: Draft plan in progress.

ITASCA: Plan adopted.

JACKSON: Plan adopted.

KANABEC: Draft plan in progress.

KANDIYOHI: Plan complete except for public hearings; public hearings scheduled for April 18, 1992.

KITTSON: Plan adopted.

KOOCHICHING: Plan complete except for public hearings; public hearings scheduled for March 4, 1992.

LAC QUI PARLE: Plan complete except for public hearings; public hearings scheduled for March 3, 1992.

LAKE: Draft plan in progress.

LAKE OF THE WOODS: Plan complete except for public hearings; public hearings scheduled for March 10, 1992.

LESUEUR: Plan adopted.

LINCOLN: No change in current plan expected; no

redistricting required.

LYON: Draft plan in progress.

MCLEOD: No progress.

MAHNOMEN: Plan adopted.

MARSHALL: Plan complete except for public hearings.

MARTIN: Plan complete except for public hearings.

MEEKER: Draft plan in progress.

MILLE LACS: Proposed plan rejected.

MORRISON: Plan complete except for public hearings.

MOWER: Plan complete except for public hearings.

MURRAY: Draft plan in progress.

NICOLLET: Plan complete except for public hearings; public hearings scheduled for April 14, 1992.

NORMAN: Plan adopted.

NOBLES: Draft plan in progress.

NORMAN: Plan adopted.

OLMSTED: Draft plan in progress.

OTTER TAIL: Draft plan in progress.

PENNINGTON: Draft plan in progress.

PINE: No progress.

PIPESTONE: Plan complete except for public.hearings; public hearings scheduled for March 10, 1992.

POLK: No change to current plan expected: no redistricting required.

POPE: Plan complete except for public hearings; public hearings scheduled for March 24, 1992.

RAMSEY: Draft plan in progress.

RED LAKE: Plan complete except for public hearings; public hearings scheduled for March 9, 1992.

REDWOOD: No change to current plan expected: no redistricting necessary.

RENVILLE: Plan complete except for public hearings; public hearings scheduled for March 3, 1992.

RICE: Plan complete except for public hearings; public hearings scheduled for April 17, 1992.

ROCK: Draft plan in progress.

ROSEAU: Plan adopted.

ST. LOUIS: Draft plan in progress.

SCOTT: Draft plan in progress.

SHERBURNE: Plan complete except for public hearings; public hearings scheduled for March 18, 1992.

SIBLEY: Draft plan in progress.

STEARNS: Plan complete except for public hearings; public hearings scheduled for April 14, 1992.

STEELE: Plan complete except for public hearings; public hearings scheduled for April 14, 1992.

STEVENS: Draft plan in progress.

SWIFT: Plan complete except for public hearings; public hearings scheduled for April 7, 1992.

TODD: Plan complete except for public hearings; public hearings scheduled for March 31, 1992.

TRAVERSE: Plan complete except for public hearings; public hearings scheduled for March 3, 1992.

WABASHA: Plan complete except for public hearings; public hearings scheduled for March 3, 1992.

WADENA: Draft plan in progress.

WASECA: Plan nearly complete: public hearings scheduled for April 7. 1992.

WASHINGTON: Draft plan in progress.

WATONWAN: Draft plan in progress.

WILKIN: Plan adopted.

WINONA: No change to current plan expected; no

redistricting required.

WRIGHT: Draft plan in progress.

YELLOW MEDICINE: No change to current plan expected; no redistricting required.

15. The response of the cities involved in redistricting is attached as Exhibit 2 hereto.

EFFORTS NECESSARY TO COMPLETE REDISTRICTING UNDER THE FEDERAL COURT ORDER

16. If the federal court's legislative plan must now be used instead of the state court's plan, the redistricting efforts of a substantial number of counties and cities will have to be reconsidered. Any county with a municipality that has been divided by the federal court's legislative boundaries may have to redo its county commissioner districts and precincts. Similarly, the municipalities will have to examine the federal court's plan to determine whether their redistricting efforts will have to be redone. Because of the extensive progress already made in local redistricting efforts, there is now significant confusion and uncertainty with respect to the next steps that must be taken by local election officials in view of the two separate redistricting orders.

ADDITIONAL LARGE PROJECTS WHICH MUST BE COMPLETED SOON

17. My office will need to update 2,650,000 voter registration records to reflect new precinct and election district assignments. I estimate that this joint effort between my office and the 87 county auditors will require a minimum of 10 weeks. Our current plan is to complete this activity no later than June 30, 1992. This will permit candidates for public office to obtain

accurate and completely updated lists of registered voters from my office prior to the start of the period for filing affidavits of candidacy on July 7, 1992. The delay caused by the two different redistricting orders make these timelines more difficult to meet.

18. In preparation for the filing period, county auditors will be required by 1992 Minn. Laws ch. 349, § 33 to publish descriptions of their congressional, legislative, and county commissioner districts no later than June 23, 1992.

19. 1991 Minn. Laws ch. 349, § 33 requires that each voter affected by a precinct boundary change must be notified by September 1, 1992. In cooperation with the county auditors and the municipal clerks, our office will be sending a mailed notice to approximately 800,000 registered voters. I estimate that it will take a minimum of 8 weeks to complete the production and mailing of these notices. These notices cannot be sent until the voter records have been updated. Our current plan is to complete this activity no later than August 28, 1992. These required activities are very time consuming and, in my opinion, cannot be delayed beyond the stated deadlines.

/s/
JOAN ANDERSON GROWE
Secretary of State
State of Minnesota

Subscribed and sworn to before me
this 2nd day of March, 1992

/s/
Notary Public

EXHIBIT 1

STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

102 STATE CAPITOL
ST. PAUL, MN 55155
HUBERT H. HUMPHREY, III TELEPHONE (612) 396-6196
Attorney General FACSIMILE: (612) 297-4193

JANUARY 31, 1992

Dear Local Election Official:

As you are well aware, Minnesota law requires local election districts to be redistricted within a specified number of days "after the legislature has been redistricted." Minn. Stat. §§ 204B.135 and 204B.14 (Supp. 1991) provide that city wards and precinct boundaries must be redistricted within sixty days and Minn. Stat. § 204B.135. subd. 2 (Supp. 1991) mandates all other local government election districts to be redistricted within eighty days. These time requirements have been the subject of several injunctions in the cases that have been brought involving redistricting.

The special state court redistricting panel in Cotlow v. Growe issued an order for judgment on December 9 establishing a final legislative redistricting plan. This plan was stopped by the federal court redistricting panel in Emison v. Growe on December 5, but the federal order was subsequently vacated by the United States Supreme Court on January 10, which reinstated the state panel's order. On January 30,1992, the state redistricting panel signed an order entering the judgment, thus establishing the state court plan as the redistricting plan for the legislature. At this time,

there are no injunctions in place which would stop enforcement of this plan.

In our view, the legislature "has been redistricted" and thus the time deadline for redrawing local election districts started, effective January 30, 1992. We recognize that the possibility exists that the state court judgment will be appealed, and there is a ninety day window for appeal. In addition, the federal panel may attempt to further review the state court plan, although we do not believe there is a legal basis to do so. Nevertheless, we believe that local districts should proceed with redrawing local boundaries in an expeditious manner. If there are further court orders which halt the process, we will so advise you as well as keep you informed of any new developments.

To summarize, city wards and precinct boundaries must be redrawn by March 30, 1992; all other election districts by April 20, 1992. It is important to achieve finality in this process as soon as possible so that the new lines are drawn well in advance of the 1992 primary and general election. Please feel free to contact us if you have any questions.

Sincerely,

/s/	/s/
MICHAEL O. FREEMAN	JOHN R. TUNHEIM
Hennepin County Attorney	Chief Deputy Attorney General
(612) 348-3099	(612) 296-2351
Attorney for Hennepin County Auditor	Attorney for Minnesota Secretary of State Joan Growe

EXHIBIT 2 to Growe Affidavit

STATUS OF MUNICIPAL REDISTRICTING	
CITIES AND TOWNSHIPS WITH MORE THAN ONE PRECINCT THAT HAVE COMPLETED REDISTRICTING	IF PRECINCTS/ WARDS NOT ESTABLISHED DATE OF PUBLIC HEARING
Apple Valley	Ada
Arden Hills	Albert Lea
Baudette	Alexandria
Brooklyn Center	Benson
Buffalo	Brainerd
Corcoran	Chaska
Crosby	Detroit Lakes
Dayton	Hugo
Deephaven	International Falls
Falcon Heights	Jackson
	Bemidji 3/2
	Blaine 3/5
	Bloomington 3/16
	Blue Earth 4/17
	Burnsville 3/2
	Caledonia 3/10
	Champlin 3/9
	Coon Rapids 3/24
	Crookston 3/10
	Crystal 3/2

IF SPECIFIC DATE NOT SET WHAT HAS BEEN COMPLETED
Afton - Have Plan
Brooklyn Park - Have Plan
Cloquet - Have Plan
Cottage Grove - Developing Plan
Fairmont - Have Plan
Hibbing - Developing Plan
Little Falls - Developing Plan
Minnetonka - Have Plan
Northfield - Have Plan
Oakdale - Multiple Plans

CITIES AND TOWNSHIPS WITH MORE THAN ONE PRECINCT THAT HAVE COMPLETED REDISTRICTING	CITIES WITH WARDS THAT HAVE COMPLETED REDISTRICTING	IF PRECINCTS/ WARDS NOT ESTABLISHED DATE OF PUBLIC HEARING	IF SPECIFIC DATE NOT SET WHAT HAS BEEN COMPLETED
Farmington	Le Center	Eagan 3/2	Robbinsdale
Fosston	Le Sueur	East Grand Forks 3/5	Rochester - Early Stages
Glenwood	Luverne	Elk River 3/2	St. Louis Park - Have Plan
Grand Rapids	Madison	Eveleth 3/17	Thief River Falls- Developing Plan
Greenway	Melrose	Fridley 3/2	Two Harbors - Have Plan
Hassan	Montgomery	Hastings 3/16	Worthington - Developing Plan
Hopkins	Mower	Kasson 3/3	
Hutchinson	Pipestone	LaCrescent 3/3	
Lakefield	Red Lake Falls	Lakeville 3/16	
Libby Twp.	Red Wing	Litchfield 3/2	
Madelia	Red Wood Falls	Mankato 3/23	
Marshall	Sauke Center	Minneapolis	
Mendota Heights	St. Peter	North Mankato 3/16	

CITIES AND TOWNSHIPS WITH MORE THAN ONE PRECINCT THAT HAVE COMPLETED REDISTRICTING	CITIES WITH WARDS THAT HAVE COMPLETED REDISTRICTING	IF PRECINCTS/ WARDS NOT ESTABLISHED DATE OF PUBLIC HEARING	IF SPECIFIC DATE NOT SET WHAT HAS BEEN COMPLETED
Mora	Wabasha	Owatonna 3/2	
Mound	Waconia	Pine City 3/4	
Mounds View	Warren	Richfield 3/23	
Mt. Lake	Watervile	Rosemount 3/2	
Nashwauk	White Bear Lake	Stillwater 2/26	
New Brighton	Willmar	St. Cloud 3/16	
Orono	Windom	S. St. Paul 3/16	
Ortonville		Tracy 3/9	
Osseo		Waseca 3/17	
Prior Lake		W. St. Paul 3/9	
Roseville		Zumbrota 3/5	
Savage			
Shingobee			
St. Cloud Twp.			

CITIES AND TOWNSHIPS WITH MORE THAN ONE PRECINCT THAT HAVE COMPLETED REDISTRICTING	CITIES WITH WARDS THAT HAVE COMPLETED REDISTRICTING	IF PRECINCTS/ WARDS NOT ESTABLISHED DATE OF PUBLIC HEARING	IF SPECIFIC DATE NOT SET WHAT HAS BEEN COMPLETED
St. James Twp.			
St. Joseph Twp.			
Virginia			
Wadena			
Wheaton			

EXHIBIT 2
to Growe Affidavit

IN THE
SUPREME COURT OF THE UNITED STATES

JOAN GROWE, SECRETARY
OF STATE OF MINNESOTA, et al.,

Appellants,

v.

JAMES EMISON, et al.,

Appellees.

AFFIDAVIT OF MARJORIE CHRISTIANSON HENNEPIN COUNTY ELECTIONS

Your affiant being first duly sworn, states and alleges:

1. She is the supervisor of elections for Hennepin County.

2. In that capacity she is responsible for determining the federal, state, and county election districts applicable to each precinct and running the elections in Hennepin County. She coordinates these efforts with the cities in Hennepin County.

3. As an election supervisor for Hennepin County your affiant has studied the legislative redistricting plans in both the state redistricting panel judgment entered January 30, 1992, and the federal judgment entered on February 19, 1992. The state court judgment follows the legislative plan which became law on August 2, 1992; the federal judgment does not follow that law.

4. Your affiant has contacted all 47 of the cities in Hennepin County to determine what each city has done to complete local redistricting. She found that all of the cities have drawn precinct and ward boundary lines as established by the state court judgment. Many of those cities are single precincts which will not require redistricting unless a legislative district line divides the city.

5. Upon review of the maps which are part of the federal court judgment, she determined that many of the cities in Hennepin County would require significant adjustments to their present plans to accommodate the federal legislative judgment. The cities with the largest adjustments are among the largest cities in Minnesota.

6. Specifically, the following cities will need to make significant changes to their population balanced wards:

Minneapolis, population 386,383
Bloomington, population 86,335
Minnetonka, population 48,370
St. Louis Park, population 43,787
Crystal, population 23,788
Champlin, population 16,849

7. These cities will need to make significant changes to their precincts if the federal court judgment is upheld:

Plymouth, population 50,889
Eden Prairie, population 39,311
Maple Grove, population 38,736
Golden Valley, population 21,971
Mound, population 9,634
Deephaven, population 3,653
Medina, population 3,096

8. Several other cities in Hennepin County will need

to make, or are likely to make, minor adjustments in their local districts to accommodate the federal court judgment:

Brooklyn Park, population 56,381
Edina, population 46,070
Richfield, population 35,710
Brooklyn Center, population 28,887
New Hope, population 21,853
Orono, population 7,285
Shorewood, population 5,917

9. The expense involved in implementing the federal court judgment at the local level is significantly higher than that of the state court judgment because of the form of the data. The state court used legal descriptions to present its plan which are easily transferred to local maps. The federal court has used a combination of old precincts and census blocks to define legislative boundaries. Identifying these indicators on a map will take approximately ten times longer than transferring the state court information took. This additional cost will apply at the city, township and county levels.

10. Hennepin County will incur duplicate costs if the deadline for finalizing local election districts is extended or the federal plan is implemented.

Further your affiant saith not.

/s/
Marjorie Christianson
Hennepin County Elections

Subscribed and sworn before me
this 4th day of March, 1992.

/s/
Notary Public

Supreme Court, U.S.
FILED
MAY 29 1992
OFFICE OF THE CLERK

(2)

No. 91-1420

In The
Supreme Court of the United States
October Term, 1991

JOAN GROWE, SECRETARY OF STATE OF THE STATE OF MINNESOTA, ET AL.,
Appellants,

vs.

JAMES EMISON, ET AL.,
Appellees.

Appeal from the United States District Court for the District of Minnesota

BRIEF OF APPELLANTS

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Attorneys for Appellants Patricia Cotlow, Phillip Krass Sharon LaComb, James Stein and Theodore Suss

QUESTIONS PRESENTED

1. Was the federal court required by the principles of federalism and comity articulated in Scott v. Germano, 381 U.S. 407 (1965), to abstain and defer to the state court where parallel actions challenging the state's legislative and congressional districts were filed in each court?

2. Was the federal court barred by the Full Faith and Credit Act and the doctrines of collateral estoppel and mootness from adopting a legislative redistricting plan that was directly contrary to a prior state court legislative redistricting judgment?

3. Is the federal court's finding of a Voting Rights Act violation, made in the context of a wholly undeveloped factual record, clearly erroneous and contrary to law?

4. Where a federal court draws new legislative and congressional districts, may it totally disregard discernable state redistricting policy as set forth by the state legislature and the state court?

LISTING OF PARTIES

Appellants

Joan Growe, Secretary of the State of Minnesota; Patricia Cotlow, Philip Krass, Sharon LaComb, James Stein, and Theodore Suss, individually and on behalf of all Citizens of Minnesota similarly situated; Patrick O'Connor, Hennepin County Auditor, individually and on behalf of all County Auditors of the State of Minnesota; the Seventy-seventh Minnesota State House of Representatives; and the Seventy-seventh Minnesota State Senate.

Appellees

James Emison, Judy Fairbanks, Marie Iverson, Ken Dean, Steve Castillo, Lew Freeman, and Yao Lo, individually and on behalf of all Citizens and Voters of the State of Minnesota similarly situated; Duane Benson, Terry Dempsey, Delores Hettig, Richard Harmon, David E. Peterson, E.M. Patricia Pidcock, and Frank Ringsmuth; and Mark Lundgren, Carver County Auditor, individually and on behalf of all County Auditors of the State of Minnesota.

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No. 91-1420

In The
Supreme Court of the United States
October Term, 1991

JOAN GROWE, SECRETARY OF STATE
OF THE STATE OF MINNESOTA, ET AL.,

Appellants,

vs.

JAMES EMISON, ET AL.,

Appellees.

**Appeal from the United States District Court
for the District of Minnesota**

CITATION TO OPINION AND JUDGMENT BELOW

The February 19, 1992, Memorandum Opinion and Order is published: Emison v. Growe, 782 F. Supp. 427 (D. Minn. 1992). The February 19, 1992, Judgment issued by the three-judge federal court is not officially reported. The order and judgment were filed in the United States District Court for the District of Minnesota, Fourth Division, under Civil File Number 4-91-202, and are set forth in the Appendix to Jurisdictional Statement at A-11 and A-

71.[1] The federal court made minor corrections to its February 19, 1992, Memorandum Opinion in an order dated April 2, 1992. JA-42.

JURISDICTION

The Order and Judgment from which this appeal was taken were filed on February 19, 1992. The Notice of Appeal was timely filed in the district court on February 26, 1992. A-362. This Court has jurisdiction under 28 U.S.C. § 1253. The appeal is from a permanent injunction issued by a district court of three judges. See A-92.

The Court's jurisdiction does not extend to the orders and final judgment of the parallel Minnesota state court redistricting action, Cotlow v. Growe, Court File Nos. C8-91-985 & MX 91-001562 (Minn. Dist. Court, Special Redistricting Panel). The state court's judgment entered January 30, 1992, adopting a legislative redistricting plan, A-355, was not appealed and became final and unappealable on April 29, 1992. See Minn. R. Civ. App. P. 104.01.

CONSTITUTIONAL, STATUTORY, AND OTHER PROVISIONS INVOLVED

Pursuant to Supreme Court Rule 24.1(f), the constitutional, statutory and other provisions involved in this case are set out in the Appendix to Jurisdictional Statement at A-373. In addition, the

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[1]References to the Appendices and Record in this action are denoted as follows:

Appendix to Jurisdictional Statement	-- A-#
Appellees' Supplemental Appendix	-- SA-#
Joint Appendix	-- JA-#
Appendix to Brief of Appellants	-- ABA-#
Record (Docket Number of Document in Federal District Court's File)	-- R-#

legislative redistricting plan enacted by the State of Minnesota, Act of May 29, 1991, ch. 246, 1991 Minn. Laws 741 (codified at Minn. Stat. §§ 2.043-2.703 (Supp. 1991)) (hereafter referred to as "Chapter 246"), as modified by the state court's December 9, 1991, order, is set out in the Appendix to Jurisdictional Statement at A-265 through A-354. Cotlow v. Growe, Court File Nos. C8-91-985 & MX 91-001562 (Minn. Dist. Court, Special Redistricting Panel Dec. 9, 1991).

STATEMENT OF THE CASE

This appeal is from a final judgment of the federal district court which adopted legislative and congressional redistricting plans for the State of Minnesota. The federal court rejected the 1991 legislative redistricting plan enacted by the State of Minnesota, Chapter 246, and drew a completely different plan. The federal court issued its legislative redistricting plan after final judgment had been entered in a parallel state court redistricting action. The state court had adopted a legislative redistricting plan that was based on Chapter 246.

The federal court issued its congressional redistricting plan despite the ongoing and parallel efforts of the state court to adopt a congressional redistricting plan. The federal court's plan did not adhere to the boundaries adopted by the Legislature in its congressional redistricting plan, Senate File 1597. A-53 to A-56.

The federal court erred by failing to defer to the parallel state court action and by ignoring the 1991 legislative redistricting law and other expressions of state redistricting policy. The background of the Legislature's redistricting efforts and of the parallel state court redistricting action, in addition to the procedural history of this federal court action, are therefore significant to this appeal.

Appellants include Joan Growe, the Secretary of State of Minnesota, who was confronted by conflicting plans of legislative and congressional redistricting; the Minnesota House of Representatives and Senate; a representative of all Minnesota local election officials; and Patricia Cotlow, et al., who are the original plaintiffs in the parallel state court action as well as the intervening plaintiffs in the federal district court suit.

A. Legislative Redistricting Efforts.

The Minnesota Legislature's redistricting efforts began before the 1990 census data became available. Computer equipment was purchased and technical personnel were hired; House and Senate Committees on Redistricting, as well as a joint subcommittee on redistricting, were appointed; formal and informal meetings and hearings were held around the state regarding redistricting; and particular efforts were made to obtain the views of minority group leaders. See A-393 to A-409; A-412 to A-420; A-436 to A-439; ABA-34 to ABA-41; ABA-44 to ABA-55.

The Legislature's legislative redistricting plan, Chapter 246, was drafted in the spring of 1991, once final census data became available. The plan's authors made concerted efforts to create districts which would enhance the representation of minority voters.[2] Their plan was begun with "footprints" of three minority senate districts in Minneapolis and Saint Paul. See A-418 to A-419; ABA-34 to ABA-41; ABA-43. These districts were the first districts to be discussed by the Legislature at a public hearing on May 3, 1991. ABA-34 to ABA-41; ABA-43. The remaining

[2]One of the goals unanimously adopted by the Legislature was the creation of a legislative redistricting plan which increased the opportunity for minority group members to be elected. A-378.

districts were then drawn around the minority district footprints. A-415 to A-417; ABA-41. When the legislative redistricting plan was proposed to the Senate Committee on Redistricting on May 15, 1991, the leaders of a variety of minority interest groups endorsed its minority districts and applauded the Legislature's efforts in working with the minority communities on the bill. See ABA-44 to ABA-55.[3]

The Legislature adopted its legislative redistricting plan, Chapter 246, at the end of its session in May, 1991. Governor Arne Carlson attempted to veto the bill but failed, and the bill became law without his signature. Litigation regarding the validity of the law was resolved by the Minnesota district court on August 2, 1991, which ruled that Chapter 246 was properly enacted. Seventy-Seventh Minnesota State Senate v. Carlson, Court File No. C3-91-7547 (Minn. Dist. Court, 2d Judicial Dist. Aug. 2, 1991). No appeal was taken from this judgment.

The language of Chapter 246 attempted to describe each of Minnesota's 201 legislative districts by the physical features of its boundaries. The State Revisor of Statutes created the written descriptions by reference to maps of the redistricting plan which had been produced by the plan's authors on the Legislature's computers. The majority of the Revisor's written boundary descriptions were accurate, but many contained technical errors of description. For example, some descriptions contained erroneous directions, such as "westerly" when "easterly" was intended. Other descriptions contained misspelled or misidentified street names, power lines, creeks, or railways. See, e.g., A-268 to A-274

[3]Similar testimony was heard by the House Committee on Redistricting on May 15, 1991. Because the microphones were inadvertently not attached to the tape recorder, no transcript of that hearing is available.

(annotations to state court modifications to Chapter 246). Other errors arose when portions of townships which are surrounded by a separate city were not joined in the same district as the city, resulting in noncontiguous districts. See, e.g., A-277. In two instances, cities were placed in two different districts, inadvertently resulting in both double representation and unacceptable population deviations. See, e.g., A-303.

The Legislature recognized that the technical defects in Chapter 246 needed to be corrected. In August, 1991, the Senate and House Committees on Redistricting proposed bills, Senate File 1596 and House File 1726, which attempted to correct the defects in Chapter 246 and to make it clearer and more stylistically consistent.[4] When the Legislature returned to session in early January, 1992, it adopted Senate File 1596. SA-120. This technical corrections bill, however, was vetoed by Governor Carlson on January 10, 1992. The Senate voted successfully to override the veto, but no override attempt was made in the House of Representatives.

In January, 1992, the Legislature also adopted a congressional redistricting plan, Senate File 1597. R-84 to R-85; R-115. This plan had been proposed by the House and Senate Committees on Redistricting in October, 1991. After hearings and further debate and revisions, the plan was adopted. Governor Carlson vetoed the plan on January 10, 1992. The Senate successfully voted to override the veto, but the House of Representatives did not attempt to override.

[4]This plan was endorsed unanimously by the Minnesota/Dakotas State Conference of the National Association for the Advancement of Colored People. A-366; A-368.

B. The State Court Redistricting Action.

Litigation regarding Minnesota's legislative and congressional redistricting efforts was first commenced by the Cotlow plaintiffs in the Minnesota state district court on January 24, 1991. The case is styled as Cotlow v. Growe, Court File Nos. C8-91-985 & MX 91-001562 (Minn. Dist. Court, Special Redistricting Panel). The Cotlow plaintiffs sought a declaratory judgment that Minnesota's 1982 legislative and congressional redistricting plans violated the Minnesota and United States constitutions. A-174.[5] The Complaint further requested the state court to adopt legislative and congressional redistricting plans if the Minnesota Legislature did not timely do so. A-186 to A-188.

The Minnesota Supreme Court appointed a three-judge panel, consisting of one appellate court judge and two district court judges, to preside over the case. A-196. Subsequently, the parties to the case stipulated that the 1982 legislative and congressional districts were constitutionally invalid under the Minnesota and federal constitutions and could not be used for any purpose except required elections to fill vacancies. A-192.

Thereafter, persons purporting to represent Minnesota Republican interests were permitted to intervene in the Cotlow suit as additional plaintiffs. These Republican plaintiffs fully participated in all aspects of the Cotlow case.

After Chapter 246 was enacted, its constitutionality was challenged in the state court action. See ABA-26 to ABA-27. All

[5]The legislative districts were originally created by the federal court in LaComb v. Growe, 541 F. Supp. 161 (D. Minn. 1982), and subsequently adopted into law by the Minnesota Legislature, Act of May 19, 1983, ch. 191, 1983 Minn. Laws 477. The congressional districts were created by the same court in LaComb v. Growe, 541 F. Supp. 145 (D. Minn.), aff'd sub nom. Orwoll v. LaComb, 456 U.S. 966 (1982).

parties and the state court recognized that many of the plan's district boundary descriptions contained errors. See A-233. During the fall of 1991, the state court held several hearings and issued several orders narrowing the scope of the claims before it and establishing the criteria to be used in adopting a legislative redistricting plan. See A-202; A-209; A-218; A-227; A-234. The state court held that the defects were not so pervasive as to invalidate the plan and, relying on this Court's precedents, it attempted to adhere to Chapter 246 to the fullest extent possible in the plan it adopted. See A-224; A-244; A-258.

The state court addressed the defects in Chapter 246 in two steps. It first sought to construe the law in accordance with Minnesota principles of statutory construction to resolve the ambiguities in the written descriptions. See A-259; A-261 to A-262.[6] The state court was guided in this effort by the legislative history of Chapter 246, which includes maps of the plan which were drafted and used by the legislators in committee and on the floor of the House and Senate. See A-228 to A-229; A-257 to A-258; cf. R-44; R-46; R-110 to R-116 (maps and reports submitted to the federal court). In the few instances where defects could not be resolved through statutory construction, the state court modified the law. A-262.[7]

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[6]Many of Minnesota's rules of statutory construction are codified. See Minn. Stat. §§ 645.16-.43 (1990).

[7]The state court did not adopt all the changes which the Legislature had proposed and eventually adopted in Senate File 1596. Many of the changes proposed by the Legislature merely improved the plan's style and clarity. The state court did not feel at liberty to make these nonessential changes to Chapter 246. See A-261 to A-262. Most of the defects in Chapter 246 could be corrected in only one way consistently with the act's legislative history. Where there were alternative means of correcting the defects, however, the state court adopted its own solutions rather than incorporating the changes proposed by the Legislature in Senate File 1596.

The state court also reviewed Chapter 246 to ensure that it met the requirements of the Voting Rights Act, 42 U.S.C. § 1973. The court requested briefs on the issue and heard arguments relating to that issue at two hearings. See A-219; A-226; A-228. In fact, no party to Cotlow (or to the subsequently filed federal cases) has ever alleged that Chapter 246 violates the Voting Rights Act. A-256. Upon its own examination, the state court, after full review of the parties' submissions, held that Chapter 246 did not violate the Voting Rights Act. A-259.

On November 21, 1991, the state court issued its legislative redistricting plan in the form of discrete changes to Chapter 246. Because of the difficulty of accurately describing the physical boundaries of districts, the state court issued its plan in preliminary form and sought comment from the parties regarding the plan. A-234; A-248. On December 9, 1991, the state court issued its final Order for Judgment, subject to the injunction which had been issued by the federal court on December 5, 1991, barring further proceedings in the state court action. A-141; A-249; A-259. The state court explained the changes it made to Chapter 246 in annotations to its plan. E.g., A-268; A-271; A-272. After this Court vacated the federal court's injunction, the state court entered final judgment implementing its legislative redistricting plan on January 30, 1992. A-355; see A-166 (Cotlow v. Emison, 112 S. Ct. 855 (Jan. 10, 1992) (mem.)).

The state court also addressed the congressional redistricting issues raised by the Cotlow plaintiffs' complaint. Because the Legislature had not enacted a congressional redistricting law in 1991, the state court deemed it necessary to await further action by the Legislature when its session resumed in early January, 1992. See A-264; A-442. The state court made clear to the parties, however, that it intended promptly to address the issues before it

regarding congressional redistricting in the event the Legislature failed to enact a congressional plan. The state court took appropriate procedural steps in anticipation of adopting a congressional redistricting plan. See A-203; A-210; A-259 to A-260; A-360.

The state court's efforts to address congressional redistricting issues were thwarted temporarily by the federal court's injunction of the state court proceedings on December 5, 1991. After the injunction was vacated on January 10, 1992, and after the Legislature's congressional redistricting plan was vetoed on the same date, the state court received proposed congressional redistricting plans and briefs regarding them. See A-360. On February 17, 1992, the state court held a hearing regarding the proposed congressional redistricting plans. A-360.

The state court's proceedings with respect to congressional redistricting were again thwarted by the federal court when the federal court issued its congressional redistricting plan on February 19, 1992. By March 3, 1992, the state court was prepared to issue its congressional redistricting plan but chose not to do so to avoid a conflict with the plan and injunction issued by the federal court. A-445 to A-446; ABA-3 to ABA-4. After this Court noted probable jurisdiction of this appeal, the state court issued its congressional redistricting plan on April 15, 1992. ABA-1. The state court's plan will not be implemented unless this Court vacates the judgment entered by the federal court. ABA-4.

C. The Federal Court Redistricting Action.

The federal court action is a consolidation of two separate cases. The first federal case was filed by the Emison plaintiffs on March 18, 1991, after the state court action had already been commenced. It is styled as Emison v. Growe, Civil File No. 4-91-

202 (D. Minn.). The Emison plaintiffs alleged that Minnesota's 1982 legislative and congressional districts violated the United States Constitution and that certain of the 1982 legislative districts further violated Section 2 of the Voting Rights Act, 42 U.S.C. § 1973. See A-73. The Emison plaintiffs are represented by the same counsel who has represented the Republican intervening plaintiffs throughout the state court action.

The second federal case was commenced by the Benson plaintiffs on August 9, 1991, after Chapter 246 was enacted and the 1982 legislative districts had been repealed. It is styled as Benson v. Growe, Civil File No. 4-91-603 (D. Minn.). The Benson plaintiffs, who are essentially the Minnesota Republican legislative leadership, alleged that Chapter 246 violated the Minnesota and United States Constitutions. The complaint did not allege that Chapter 246 violated the Voting Rights Act. See SA-63.

A three-judge panel was appointed pursuant to 28 U.S.C. § 2284 to hear both federal cases, and the two cases were consolidated. A-92; A-104. On August 21, 1991, the federal court denied motions by the Legislature and the Secretary of State asking the court to defer to the pending state court action. A-104. It also denied, for the time being, the Emison plaintiffs' motion to enjoin the state court action. Id.

On December 5, 1991, after the state court had issued its preliminary legislative redistricting plan, the federal court enjoined all further proceedings in the state court action. A-160. An appeal was immediately made to this Court and, on January 10, 1992, this Court vacated the federal court's injunction. A-166 (Cotlow v. Emison, 112 S. Ct. 855).

On February 19, 1992, three weeks after the state court had entered its final judgment adopting a legislative redistricting plan,

the federal court adopted its own legislative redistricting plan. A-11. The federal court plan gave absolutely no weight or deference to either Chapter 246 or the state court plan. A-42 to A-44. At the same time, and without hearing, the federal court issued a congressional redistricting plan, which plan was drafted from scratch without any apparent consideration of state policies or needs. Id. The federal court permanently enjoined Minnesota's election officials from conducting elections under any other plans. A-71 to A-72. Judge MacLaughlin dissented from the federal court's order and judgment to the extent it related to legislative redistricting.

Appellants filed their notice of appeal to this Court on February 26, 1992. A-362. Appellants applied for a stay of the federal court's February 19, 1992, order and judgment pending consideration of this appeal. On March 11, 1992, Justice Blackmun granted the application for a stay with respect to the federal court's legislative redistricting plan, Growe v. Emison, Docket No. 91-1420 (U.S. Blackmun, Circuit Justice March 11, 1992), but denied the application for a stay with respect to the federal court's congressional redistricting plan. Absent further intervention by this Court, Minnesota's 1992 legislative elections will be conducted pursuant to the January 30, 1992, judgment entered in the state court action and its 1992 congressional elections will be conducted pursuant to the February 19, 1992, judgment entered in the federal court action.

SUMMARY OF THE ARGUMENT

The federal court's judgment adopting a legislative redistricting plan should be vacated on four separate grounds. Two of these grounds also require that the federal court's judgment adopting a congressional redistricting plan be vacated.

First, the federal court should have deferred to the parallel state court redistricting action. Under the abstention doctrine established in Scott v. Germano, 381 U.S. 407 (1965) (per curiam), the State of Minnesota, through its legislature and judiciary, should have been permitted to resolve all claims relating to both legislative and congressional redistricting without the intrusion of the federal court. The policies that underlie the abstention rule--federalism, state sovereignty in election matters and avoidance of conflicting judgments--remain sound and the rule should be reaffirmed by this Court.

Second, the federal court erred in adopting a legislative redistricting plan after the state court had entered judgment adopting its own legislative redistricting plan. Under the Full Faith and Credit Act, 28 U.S.C. § 1738, and the doctrines of collateral estoppel and mootness, the federal court was required to respect the state court judgment and to dismiss the claims in the federal action relating to legislative redistricting.

Third, the federal court's sua sponte finding that Minnesota's 1991 legislative redistricting plan, Chapter 246, and the state court's legislative redistricting plan failed to remedy a perceived Voting Rights Act violation was clearly erroneous and contrary to law. Even if the federal court acted properly in reviewing these plans, it erred by not applying the three part test established by this Court in Thornburg v. Gingles, 478 U.S. 30 (1986). Under this test, no Voting Rights Act violation could have been found. Instead, the Voting Rights Act was used by the federal court as a pretext to substitute its will for the policy choices made by the State of Minnesota.

Fourth, even if the federal court acted properly in adopting legislative and congressional redistricting plans, its judgment should be vacated because the plans it adopted fail to adhere to

discernible state policy. The federal court's legislative redistricting plan does not follow Chapter 246 to the extent possible, and its congressional redistricting plan does not incorporate Senate File 1597 to the extent possible.

ARGUMENT

I. THE FEDERAL COURT WAS REQUIRED TO DEFER TO THE PARALLEL STATE COURT ACTION UNDER THE ABSTENTION PRINCIPLES OF SCOTT V. GERMANO.

More than a quarter of a century ago, in the wake of the landmark decision in Reynolds v. Sims, 377 U.S. 533 (1964), this Court established a bright line abstention rule in redistricting cases, marking an important principle of federalism from which it has never wavered. In Scott v. Germano, 381 U.S. 407 (1965) (per curiam), the Court reaffirmed that the power to redistrict lies with the states and ruled that federal courts must defer to state legislatures and state courts in redrawing legislative and congressional boundaries. The rule's limits are clear and well-defined. The federal courts must abstain at least until the state institutions have had a reasonable opportunity to redistrict. State courts must provide an adequate opportunity for constitutional and statutory challenges to be made. Only if the state institutions fail to complete the task or fail to make timely progress may the federal courts intervene, and then only to the extent necessary to ensure compliance with constitutional and statutory requirements. In performing this function, the federal courts must follow all state policies with respect to redistricting.

In Germano, the Court unequivocally stated its support not only for the role of state legislatures, but for the role of state courts in the redistricting process: "The power of the judiciary of a State

. . . to formulate a valid redistricting plan has not only been recognized by this Court but appropriate action by the States in such cases has been specifically encouraged." Id. at 409.[8] The Court has repeatedly emphasized the primary role that state institutions have in resolving redistricting issues. E.g., Chapman v. Meier, 420 U.S. 1, 27 (1975) ("We say once again what has been said on many occasions: reapportionment is primarily the duty and responsibility of the State through its legislature or other body, rather than of a federal court.").

Federal courts have almost uniformly recognized both the states' vital interest in redistricting and the abstention doctrine established in Germano and, as a result, have deferred to parallel state court redistricting proceedings.[9] E.g., Bianchi v. Griffing, 393 F.2d 457, 461 (2d Cir. 1968); Badham v. Eu, 568 F. Supp. 156, 158 (N.D. Cal.), aff'd sub nom. Badham v. United States Dist. Court, 721 F.2d 1170 (9th Cir. 1983); Avens v. Wright, 320 F. Supp. 677, 686 (W.D. Va. 1970); Mahoney v. Burkhardt, 299 F. Supp. 787, 789 (D.N.J. 1969). Most recently, in California, a

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[8]Germano involved a federal district court which refused to defer to a parallel state court redistricting action in Illinois. This Court directed the federal district court to defer to the state court action and to enter an order fixing a "reasonable time" within which "appropriate agencies of the State of Illinois, including its Supreme Court, may validly redistrict the Illinois State Senate . . . . " Id.

[9]Although a federal court is generally obligated to exercise jurisdiction over the claims before it, see Colorado River Water Conservation Dist. v. United States, 424 U.S. 800, 817 (1976), in certain instances public policy dictates that federal courts defer to the adjudication of claims in state court. E.g., id. at 818-19; Burford v. Sun Oil Co., 319 U.S. 315, 331-34 (1943). In particular, a federal court should defer to an ongoing state court action when vital state interests are implicated and adequate opportunity exists in the state proceedings to raise constitutional challenges. See Middlesex County Ethics Comm. v. Garden State Bar Ass'n, 457 U.S. 423, 432 (1982); Younger v. Harris, 401 U.S. 37, 44-45 (1971).

federal district court deferred to a parallel state court redistricting action citing Germano. Members of the Cal. Democratic Congressional Delegation v. Eu, Court File No. C-91-3383, slip op. at 19 (N.D. Cal. March 3, 1992) ("The line of United States Supreme Court and circuit court decisions since Scott v. Germano in 1965 and Younger v. Harris in 1971 is virtually unbroken, all leading to the same conclusion.").

The important policies behind the abstention rule in redistricting cases remain sound. First, the states' power to establish election districts and draw their boundaries is an important cornerstone of federalism, any retreat from which will cause inherent harm to the states. State constitutions uniformly grant state institutions the power to draw legislative district boundaries, e.g., Minn. Const. art. IV, § 3, and the United States Constitution grants the states the power to redraw congressional district boundaries, U.S. Const. art. I, § 4. Second, states have a strong interest in ensuring not only the integrity of the elections that are held within their borders, but also the integrity of the election districts that are established within their borders. Elections and election districts are, of course, uniquely intrastate; districts nowhere cross state lines to create issues of special federal significance. As instrumentalities of the states, state courts are best able both to effectuate the state's vital policy interests and to ensure that all constitutional and statutory requirements are followed. Third, state and federal courts cannot both separately redraw legislative and congressional district lines. Only one set of boundaries can exist. In addition to the obvious problems caused by conflicting judgments, including voter and candidate confusion, waste of resources, duplication of effort, and a lack of finality, separate judgments cause inherent harm to the integrity of the judiciary.

Parallel redistricting actions were pursued in Minnesota state and federal courts beginning in early 1991. The relevant claims raised in each case were the same: plaintiffs alleged that Minnesota's 1991 legislative redistricting plan (Chapter 246) and its 1982 congressional redistricting plan violated state and federal constitutional requirements.[10]

The state court in Cotlow v. Growe recognized and adhered to the doctrine established in Germano in denying a motion asking the state court to defer to the parallel federal court action. A-220 to A-223. The state court emphasized the significant policy concerns underlying Germano and refused to abdicate its redistricting responsibilities, stating:

> The integrity of elections and the integrity of legislative apportionment are vital to this state's governance. The strong state interest in guaranteeing rights of political participation require maintaining control over reapportionment, a matter of particularly local concern. A state's judiciary, as well as its legislature, is charged with taking an active part in preserving these interests. See Scott v. Germano . . . .

A-221. See also A-248.

Secretary of State Growe and the Minnesota Legislature moved the federal court to defer to the ongoing state court action based on the abstention doctrine established in Germano. The federal court denied the motion on August 21, 1991, A-103, and

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[10]The federal action initially involved allegations of Voting Rights Act violations. These allegations related to Minnesota's 1982 legislative districts and became irrelevant when those districts were repealed by Chapter 246. See, e.g., Kremens v. Bartley, 431 U.S. 119, 128-29 (1977) (case rendered moot when relevant statute repealed). Section 69 of Chapter 246 provides "Minnesota Statutes 1990, sections 2.019 [and] 2.042 [through] 2.702, are repealed." Act of May 29, 1991, ch. 246, § 69, 1991 Minn. Laws 781.

began preparing its own redistricting plans and hearing substantive motions, see A-119; A-128; A-132; A-138; A-162. Far from deferring to the parallel state court action, the federal court subsequently enjoined all further state court proceedings just as the state court was prepared to enter its judgment adopting a legislative redistricting plan. A-141; A-160.

The federal court's injunction barring state court action was swiftly vacated upon appeal to this Court. A-166 (Cotlow v. Emison, 112 S. Ct. 855 (Jan. 10, 1992) (mem.)). One of the primary grounds raised by appellants in that appeal was the doctrine set forth in Germano. It is apparent that the federal court misunderstood the nature and significance of this Court's summary vacation of the injunction. In its February 19, 1992, order, the federal court stated:

> When the Supreme Court dissolved the injunction, the purpose of the injunction had been fulfilled. An appellate court does not work in a vacuum without a record or briefs from both sides. To urge that the Supreme Court intended to decide the complex federalism issues we now address without a plenary record and hearing demeans the appellate process.

A-24 to A-25 n.26.[11]

Even after the state court entered its final judgment confirming its December 9, 1991, plan, the federal court refused to abstain. The federal court instead adopted its own legislative and congressional redistricting plans and enjoined Minnesota's election

[11]Despite the federal court's observation, it is clear that a summary reversal order is appropriate for "situations in which the law is well-settled and stable, the facts are not in dispute, and the decision below is clearly in error." Schweiker v. Hansen, 450 U.S. 785, 790 (1981) (Marshall, J., dissenting). See generally Robert L. Stern, et al., Supreme Court Practice ¶ 5.12 (6th ed. 1986).

officials from conducting elections under the state court's plan. A-71 to A-72.[12] The federal court's continued refusal in this action to defer to the parallel state court proceeding has therefore required a second appeal.

The federal court's February 19, 1992, order purports to heed this Court's pronouncements in Germano, but in reality violates both the letter and the spirit of that decision. The federal court offers two grounds for ignoring the state court's judgment: the existence of unspecified "independent" federal issues and the court's belief that the state judicial process would require undue delay. A-25. Neither reason supports the federal court's attempt to overrun the state's judicial process.

The federal court refers to only one issue allegedly not present in the state court proceedings: a Voting Rights Act challenge. In neither the federal action nor the state action, however, did any party allege that Chapter 246 violated the Voting Rights Act. See A-241; A-73; SA-63. Moreover, the state court had directed the parties to address any allegations they might have that Chapter 246 or the state court plan violated the Voting Rights Act. A-226. None were asserted by any party. A-256. After undertaking its own analysis, the state court expressly determined

[12]The federal court permanently enjoined the State of Minnesota from conducting elections under any plan other than the federal court's order or a plan enacted by the Legislature. The wording of the injunction appears designed to prevent the state court from issuing redistricting plans ever again. See R-129 (Emison plaintiffs urged federal court to adopt legislative plan despite state court order for judgment based on federal court's "continuing jurisdiction" from 1982 redistricting action); cf. A-443 to A-444 (motion brought to dismiss state court action based on federal court's "continuing jurisdiction" from 1982 redistricting action).

that Chapter 246 met the standards of the Voting Rights Act. A-244; A-259.[13] No party has appealed that determination.

The federal court's presumption that the state court could not redistrict in a timely fashion is also wrong. The state court's legislative redistricting plan was published on December 9, 1991, its judgment was entered on January 30, 1992, and the judgment became unappealable on April 29, 1992.[14] The state court was also prepared to adopt a congressional redistricting plan as early as March 3, 1992. A-446.[15] Moreover, judgment on both plans would have been entered much sooner but for the federal court's December 5, 1991, injunction. Having itself prevented the state court action from proceeding, the federal court could not rely on

[13]To the extent that the federal court believed that it had exclusive jurisdiction over the Voting Rights Act, the court was incorrect. See Hathorn v. Lovorn, 457 U.S. 255, 269 (1982); Members of the California Democratic Congressional Delegation v. Eu, Court File No. C-91-3383 slip op. at 15 (N.D. Cal. March 3, 1992); see also Gulf Offshore Co. v. Mobil Oil Corp., 453 U.S. 473, 477-78 (1981) (concurrent state court jurisdiction presumed absent congressional provision to the contrary or disabling incompatibility). In adopting a redistricting plan, a court necessarily must ensure that it meets the requirements of the Voting Rights Act. Fletcher v. Golder, 959 F.2d 106, 110 (8th Cir. 1992).

[14]A ninety day appeal period applied to the state court's judgment. Minn. R. Civ. App. P. 104.01.

[15]It is undisputed that the drawing of congressional districts is a state responsibility. The United States Constitution gives responsibility for drawing congressional district boundaries to state legislatures. U.S. Const. art. I, § 4. When a state legislature fails to adopt a congressional redistricting plan, state courts are urged, under the doctrine established in Scott v. Germano, to adopt a plan. Numerous state courts have met this responsibility, California being the most recent example. E.g., Wilson v. Eu, 823 P.2d 545 (Cal. 1992); Assembly v. Deukmejian, 639 P.2d 939 (Cal.), cert. denied and app. dismissed sub nom. Republican Nat'l Comm. v. Burton, 456 U.S. 941 (1982); Legislature of Cal. v. Reinecke, 492 P.2d 385 (Cal. 1972); Koziol v. Burkhardt, 241 A.2d 451 (N.J. 1968); People ex rel. Scott v. Kerner, 211 N.E.2d 736 (Ill. 1965).

the resulting delay to preempt the primary and rightful role of the state court.

If a federal district court at any time can adopt its own redistricting plan while a state court is proceeding diligently to resolve the issues presented, or has already resolved those issues, there is really no reason for the state court ever to become involved in redistricting cases. Affirmance of the federal court judgment in this case would invite continued litigation of redistricting issues that have already been decided in the state courts. If partisan interests are not satisfied in a state court proceeding, litigants would be fully able to raise those interests anew in a separate federal court proceeding. Furthermore, affirmation of the federal court judgment would remove from state court consideration the vital issues of state policy raised in redistricting cases. In addition, as this case dramatically demonstrates, the simultaneous litigation of parallel state and federal redistricting actions can result in wasteful proceedings, unnecessary appeals, conflicting judgments, voter and candidate confusion, diminished respect for the judiciary, and serious harm to our federal system of justice.[16] Concepts of federalism are rendered meaningless if a federal court can simply ignore state court redistricting efforts merely because it wants, for whatever reason, to assume the task itself.

[16]The wastefulness of the duplicative federal proceedings is underscored by the extraordinary costs incurred in the federal proceeding by the State of Minnesota. For example, the cost of the special masters alone in the federal action was $158,745.71, R-155; R-158; R-159, while the total cost expended by the state panel was $28,786.54, ABA-6 to ABA-7. These costs have been charged to and paid by the State of Minnesota. JA-40. Furthermore, attorneys for the Emison and Benson plaintiffs have moved to seek more than $279,000 from the State of Minnesota for their attorney fees and costs in the federal action as of March 20, 1992. R-148 to R-153.

Germano clearly dictates state court primacy in this action. This Court is urged to state unequivocally to the court below, and to other federal district courts faced with parallel state court redistricting proceedings,[17] that state courts must be allowed a reasonable opportunity to resolve the redistricting issues before them. Only when it is clear that a state court has failed to meet its redistricting responsibilities should a federal court proceed to resolve the parallel redistricting claims before it. Under no circumstances can the State of Minnesota be said to have failed to meet its redistricting responsibilities. The federal court judgment should be vacated in its entirety.

II. THE STATE COURT'S JUDGMENT BARRED THE FEDERAL COURT FROM ADOPTING A LEGISLATIVE REDISTRICTING PLAN.

The federal court's judgment adopting a legislative redistricting plan and enjoining Minnesota election officials from conducting legislative elections under any other plan is incompatible with the judgment entered by the state court on January 30, 1992, which requires Minnesota election officials to conduct its 1992 elections under the state court's plan. When rendering its judgment, the federal court was aware of the pre-existing state court judgment but chose to ignore it. A-23 to

[17]Parallel state and federal actions are currently pending in Florida, New York, Ohio, Pennsylvania (congressional), and Texas. Parallel state and federal actions have been resolved in California, Illinois, and Pennsylvania (legislative). See, e.g., Table 5, A-391 to A-392; Members of Cal. Democratic Congressional Delegation v. Eu, Court File No. C-91-3383 (N.D. Cal. March 3, 1992); Illinois Redistricting Comm'n v. LaPaille, 1992 U.S. Dist. LEXIS 2930 (N.D. Ill. March 11, 1992). These cases involve the redistricting of state legislatures and congressional seats. Hundreds, if not thousands, of additional redistricting actions can be anticipated in the next few years as districts for county, municipal, school board, and other offices are redrawn.

A-24; see also R-114; R-121; R-124; R-126 (parties urged federal court to defer to state court order for judgment after federal court order of stay vacated).

The federal court's subsequent judgment adopting a legislative redistricting plan violates fundamental principles of federalism. The federal court judgment violates the Full Faith and Credit Act, 28 U.S.C. § 1738, and contravenes the principles of collateral estoppel. In addition, the judgment constitutes an advisory opinion as the claims before the federal court relating to legislative redistricting became moot once the state court judgment was entered. Each of these grounds requires that the federal court judgment creating a legislative redistricting plan be vacated.

A. The Federal Court's Order Violated the Full Faith and Credit Act.

By adopting its own legislative redistricting plan despite the existence of a prior and valid state court judgment establishing a constitutionally valid redistricting plan, the federal court violated the Full Faith and Credit Act, 28 U.S.C. § 1738. The Act provides, in part:

> The records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form.
>
> Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and

> its Territories and Possessions as they have by law or usage in the courts of such State, Territory, or Possession from which they are taken.

Under this statute, the federal court was obligated to give the state court judgment the same effect it would have in the Minnesota courts. Parsons Steel, Inc. v. First Ala. Bank, 474 U.S. 518, 525 (1986); see also Charles Koen & Assocs. v. City of Cairo, 909 F.2d 992, 996-97 (7th Cir. 1990). Under Minnesota law, the judgment remained final unless and until reversed. Simonds v. Norwich Union Indem. Co., 73 F.2d 412, 416 (8th Cir. 1934), cert. denied, 294 U.S. 711 (1935); State ex rel. Spratt v. Spratt, 184 N.W. 31, 32 (Minn. 1921). The federal court was required to respect the judgment, absent reversal of the judgment on appeal. It did not do so.

The Full Faith and Credit Act was enacted to prevent federal courts from undermining the power and integrity of state courts and to avoid the imposition of conflicting judgments. The federal court's action betrayed these important goals. Minnesota's election officials, candidates, and citizens have been subjected to conflicting orders by the federal and state courts. The state court's order was never appealed and is no longer subject to reversal. The discord between the courts' judgments can therefore be resolved only if this Court vacates the federal court's legislative redistricting plan.

B. The Federal Court's Order Contravenes the Principles of Collateral Estoppel.

The federal court's order should also be reversed because the parties to the federal action were collaterally estopped from pursuing the same issues which were necessarily resolved by the state court's December 9, 1992, order. The state court unanimously held that Chapter 246 complies with the Voting

Rights Act and unanimously adopted a legislative redistricting plan based on Chapter 246. A-258 to A-259. The state court order resolved all claims that Chapter 246 violated the Minnesota and United States Constitutions. The state court's holding was final, subject only to review by the Minnesota appellate courts and, ultimately, by this Court. Apparently not satisfied with the result, the Benson plaintiffs continued to litigate their constitutional challenges to Chapter 246 in the federal action.[18] The federal court erred in relitigating these issues.

This Court and lower federal courts generally have accorded preclusive effect to issues of law and fact decided by state courts. In Allen v. McCurry, 449 U.S. 90, 94 (1980) this Court stated:

> Under collateral estoppel, once a court has decided an issue of fact or law necessary to its judgment, that decision may preclude relitigation of the issue in a suit on a different cause of action involving a party to the first case.

The doctrine reduces unnecessary litigation, fosters reliance on adjudication, and "promote[s] the comity between state and federal courts that has been recognized as a bulwark of the federal system." Id. at 95-96.

Under Minnesota law, collateral estoppel precludes the relitigation of all issues already litigated in a prior action. Gollner v. Cram, 102 N.W.2d 521, 523 (Minn. 1960). The Minnesota Supreme Court has articulated four factors which must be established in order to invoke the doctrine of collateral estoppel. The doctrine precludes relitigation of an issue if: 1) the issue is

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[18] The Emison plaintiffs' claims regarding legislative redistricting related to the 1982 legislative districts and became moot when the statute establishing those districts was repealed by Chapter 246. See, e.g., Kremens v. Bartley, 431 U.S. 119, 128-29 (1977) (case rendered moot when relevant statute repealed).

identical to an issue in a prior action; 2) final judgment was entered in the prior action on the merits; 3) the estopped party was a party or in privity with a party in the prior action; and 4) the estopped party was given a full and fair opportunity to be heard on the adjudicated issue. Ellis v. Minneapolis Comm'n on Civil Rights, 319 N.W.2d 702, 704 (Minn. 1982). All four factors support the application of collateral estoppel in this action to preclude relitigation of the Benson plaintiffs' claims.

First, the issues raised in the federal action were resolved by the state court. The Benson plaintiffs challenged the constitutionality of Chapter 246 based on the technical errors contained in its written boundary descriptions. SA-63. Chapter 246 was similarly challenged in the state court action. ABA-26 to ABA-27. The state court meticulously reviewed Chapter 246 and adopted a plan which cured the alleged defects. See A-259. Although no allegation of a Voting Rights Act violation was made against Chapter 246 in either the federal or the state court action, the state court thoroughly reviewed and resolved this issue as well. A-259.

Second, the state court entered its final judgment on the merits on January 30, 1992. A-355. No appeal was taken from the judgment and the time for appeal has now expired.

Third, the plaintiffs in the federal court cases and the intervening plaintiffs in the state court case all represent the same interests. All of these parties brought their claims on behalf of all citizens and voters of Minnesota who subscribe to the views of the Minnesota Independent Republican Party. A-74; SA-64; ABA-23 to ABA-24. They are in privity with each other. Montana v. United States, 440 U.S. 147, 154-55 (1979). In any event, the state court action was pleaded as a class action on behalf of the

citizens of Minnesota; the state-court result was dispositive as to all parties in all of the actions.

Fourth, all parties were given a full and fair opportunity to be heard in state court. The state court requested the parties to address all alleged defects in Chapter 246 as well as any Voting Rights Act issues and held hearings regarding these issues. See A-226; A-228; A-229 to A-232; A-248.

Appellees' claims relating to legislative redistricting were finally resolved by the state court on January 30, 1992. The doctrine of collateral estoppel bars them from seeking contradictory relief in this action, and the federal court's judgment relating to legislative redistricting should, therefore, be vacated.

C. The Federal Court's Order Was an Advisory Opinion as the Claims Regarding Legislative Redistricting in the Federal Action Were Moot.

The federal court's ruling regarding legislative redistricting should also be dismissed on grounds of mootness. An action must be dismissed when the facts change in a way that renders the controversy moot. See generally Erwin Chemerinsky, Federal Jurisdiction § 2.5, at 109-10 (1989). Once a controversy is resolved, a court loses jurisdiction to decide the matter and its ruling on the merits of the resolved action constitutes an advisory opinion. U.S. Const. art. III, § 2; United States Parole Comm'n v. Geraghty, 445 U.S. 388, 395-96 (1980).

The claims raised in the federal action regarding legislative redistricting became moot once the state court entered its judgment adopting a legislative redistricting plan. The federal court's legislative redistricting plan did not resolve any pending claims and constituted an advisory opinion. The federal court's judgment should therefore be vacated. See, e.g., United States Dep't of

Treasury v. Galioto, 477 U.S. 556, 559-60 (1986) (amendment of statute rendered action moot); Kremens v. Bartley, 431 U.S. 119, 128-29 (1977).

The first of the two federal cases to be filed, Emison v. Growe, alleged that the 1982 legislative districts violated the United States Constitution and Section 2 of the Voting Rights Act. These claims became moot when the 1982 legislative redistricting plan was repealed by Chapter 246. Act of May 29, 1991, ch. 246, § 69, 1991 Minn. Laws 781. There could thus be no reasonable expectation that the 1982 districts would be applicable to anyone. At that point all Emison claims regarding legislative redistricting became moot. Weinstein v. Bradford, 423 U.S. 147, 149 (1975); Sosna v. Iowa, 419 U.S. 393, 402 (1975).

Plaintiffs in the second federal case, Benson v. Growe, contended only that the constitutional rights of Minnesota voters would be violated if elections were held pursuant to Chapter 246. Once the state court ordered that legislative elections be conducted under its plan rather than Chapter 246, there was no longer any reasonable expectation that Chapter 246 as enacted would be applicable to anyone. The Benson claims therefore became moot as well. See County of Los Angeles v. Davis, 440 U.S. 625, 631 (1979); Sosna, 419 U.S. at 402.

Even if the Emison or Benson claims regarding legislative redistricting somehow remained viable while pending before the federal court, they became moot once the time for appeal of the state court judgment expired. See United States v. Munsingwear, Inc., 340 U.S. 36, 39 (1950) ("The established practice of the Court in dealing with a civil case from a court in the federal system which has become moot while on its way here or pending our decision on the merits is to reverse or vacate the judgment below and remand with a direction to dismiss."). The federal actions, as

they relate to legislative redistricting, should therefore be dismissed as moot, and the February 19, 1992, judgment adopting a legislative redistricting plan should be vacated.

III. THE FEDERAL COURT'S FINDING OF A VOTING RIGHTS ACT VIOLATION IS ERRONEOUS AND CONTRARY TO LAW.

The pretext on which the federal court based its adoption of a legislative redistricting plan was Section 2 of the Voting Rights Act, 42 U.S.C. § 1973. No party ever alleged that Chapter 246 violated the Voting Rights Act; no evidence of a Voting Rights Act violation was submitted; and the federal court entered its judgment without briefs or a hearing on the issue. Moreover, the issue had previously been resolved by the state court which requested briefs, A-226, addressed the issue at two hearings, A-219; A-228, and held that Chapter 246 met the requirements of the Voting Rights Act, A-259.

The federal court proceeded sua sponte and found that something, which it never identified, violated Section 2 of the Voting Rights Act. A-37 to A-38. It then artfully found that neither Chapter 246 nor the state court's plan remedied the Voting Rights Act violation which it had detected. A-38 to A-39.[19] The federal court deemed that a "super-majority minority" senate district was required to satisfy the requirements of the Voting

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[19]As the Fifth Circuit Court of Appeals noted in Overton v. City of Austin, this approach "puts the cart before the horse." 871 F.2d 529, 543 (5th Cir. 1989) (per curiam). A court must find vote dilution in the existing district before turning to the question of what remedy should apply.

Rights Act in Minnesota. A-39.[20]

The federal court's finding that Chapter 246 failed to satisfy the Voting Rights Act is devoid of support either in law or fact. The federal court chose not to apply the three-part test which this Court established in Thornburg v. Gingles, 478 U.S. 30, 48 (1986). A prima facie showing that Chapter 246 violated the Voting Rights Act could not have been made under that test. In addition, the one-sided record created by the federal court, without the opportunity for rebuttal evidence to be submitted, is wholly insufficient to support a finding that Chapter 246 violated the Voting Rights Act under the "totality of the circumstances" test which the federal court applied.

A. No Prima Facie Showing Could Be Made That Chapter 246 Violates Section 2 of the Voting Rights Act.

Section 2 of the Voting Rights Act prohibits a state from using any standard, practice, or procedure in a manner which results in a denial of the right to vote on account of race or color.[21] The Voting Rights Act does not, however, require that

[20]The federal court's plan, however, did not create a senate district in which members of any minority group, or even of all minority groups combined, constitute a majority of the voting age population in the district. See Table 2, A-381.

[21]Section 2(a) of the Voting Rights Act, 42 U.S.C. § 1973(a), states:

> No voting qualification or prerequisite to voting or standard, practice or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in Section 1973b(f)(2) of this title [relating to language minorities], as provided in subsection (b) of this section.

districts be drawn to maximize the opportunity of minority voters to elect representatives of their choice. See Gingles, 478 U.S. at 94 (O'Connor, J., concurring) (in enacting Section 2, Congress did not intend to provide minority voters with "maximum feasible minority voting strength").

The federal court erred in interpreting the Voting Rights Act as requiring the creation of a super-majority minority district. Requiring the maximization of minority voting strength is tantamount to requiring proportional representation. Section 2 specifically provides that "nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population." 42 U.S.C. § 1973(b). Rather, Section 2 prohibits a state from creating districts which dilute the ability of minority group members to elect representatives of their choice. Gingles, 478 U.S. at 46-47.

To prevail, a party challenging a redistricting plan under Section 2 of the Voting Rights Act must prove that the implementation of the plan will operate, or has operated, to minimize or cancel out the ability of minority voters to elect their preferred candidates. Gingles, 478 U.S. at 48. In Gingles, this Court identified three circumstances which must exist for a violation of Section 2 of the Voting Rights Act to be found in a redistricting action. First, the minority group must be shown to be sufficiently large and geographically compact to constitute a majority of the voters in a single-member district.[22] Second, the

[22]The Court in Gingles implied, but did not specifically state, that minority group members must be able to constitute a majority of the voting age population in a district to satisfy this precondition. Gingles, 478 U.S. at 50 n.17. Courts have uniformly construed Gingles in this way. E.g., Romero v. City of Pomona, 883 F.2d 1418, 1426 (9th Cir. 1989), overruled on unrelated grounds, Townsend v. Holman Consulting Corp., 914 F.2d 1136, 1141 (9th Cir. 1990); McNeil v. Springfield Park Dist., 851 F.2d 937, 942 (7th Cir. 1988), cert. denied, 490 U.S. 1031 (1989).

minority group must be shown to be politically cohesive. Third, the party challenging the plan or structure must demonstrate that, absent special circumstances, bloc voting by the white majority in the challenged district usually defeats the minority's preferred candidate. Id. at 50-51. Unless all three of these preconditions are met, it can not be held that a districting plan or structure dilutes minority voting power in violation of Section 2 of the Voting Rights Act.[23]

Gingles involved a challenge to a redistricting plan which created multimember districts, but the threshold test it sets forth applies as well to challenges to redistricting plans which create single-member districts. See Gingles, 478 U.S. at 50 n.17; see also Jeffers v. Clinton, 730 F. Supp. 196, 205 (E.D. Ark. 1989), aff'd, 111 S. Ct. 662 (1991); McDaniels v. Mehfoud, 702 F. Supp. 588, 591 (E.D. Va. 1988), appeal dismissed, 927 F.2d 596 (4th Cir. 1991). As Judge MacLaughlin noted in his dissent in this action, in the absence of any principled basis for distinguishing between challenges to multimember districting schemes and challenges to single-member districting schemes, courts have concluded that the Gingles test applies to both types of voting rights challenges. See A-63 to A-64.[24]

[23]The threshold test established in Gingles serves as an effective screen against meritless Voting Rights Act claims. Such a bright-line test is necessary for the hundreds of state, municipal, and other redistricting actions which follow each census.

[24]It would be nonsensical to apply the Gingles preconditions to multimember districts and not to single-member districts. For instance, if Chapter 246 had combined senate districts 58, 60, and 61 into a multimember senate district, the Gingles test would apply. Chapter 246 should not be held to a higher standard under the Voting Rights Act because it created single-member districts, a device which enhances the opportunity for minorities to elect representatives of their choice. See Wise v. Lipscomb, 437 U.S. 535, 540-41 (1978) (absent special

The federal court chose not to apply the three-part Gingles test in this action. A-28 to A-30. Chapter 246 can not be held to violate Section 2 of the Voting Rights Act if that test is applied. The federal court's failure in this case even to attempt to satisfy the Gingles requirements appears to be less a result of any principled distinction between single-member districts and multimember districts than a result dictated by the impossibility of finding a Voting Rights Act violation in this case under the test.

With respect to the first Gingles precondition, it is not possible to draw a geographically compact House or Senate district in Minnesota in which members of a single minority group would constitute a majority of the voting age population of the district. In drafting Chapter 246, both the House and Senate authors started by looking for areas in which members of a racial or language minority group were "sufficiently large and geographically compact to constitute a majority in a single-member district." Gingles, 478 U.S. at 50. They found none.[25] Even by lumping minority groups together within a district, the authors of the redistricting plan were able to create only three House districts in which combined groups of minority members constituted a majority of

circumstances, federal courts must use single-member districts rather than multimember districts when imposing redistricting plans).

[25]Specifically, the House and Senate authors of Chapter 246 found that the highest concentration of African-Americans in Minnesota was north of downtown Minneapolis (47 percent of a House district), the highest concentration of Native Americans was in northwestern Minnesota (21 percent of a House district), the highest concentration of Asians and Pacific Islanders was north and west of downtown St. Paul (14 percent of a House district), and the highest concentration of Hispanics was south of downtown St. Paul (13 percent of a House district). When voting age populations were measured for each of these groups, these percentages were even lower.

the total population. See Table 1, A-380. These districts were enacted in Chapter 246 and included in the state court plan.

The second precondition of Gingles has likewise not been shown to exist in Minnesota. As other courts have recognized, it is difficult to demonstrate political cohesiveness within a single minority group, much less among members of different minority groups. See, e.g., Romero, 883 F.2d at 1426 (Blacks and Hispanics found not to be politically cohesive). The record in this action is devoid of any evidence that the members of a single minority group are politically cohesive. A-30 n.30. More importantly, there are no facts to support a finding that members of all minority groups within Minnesota combined are politically cohesive.

Finally, the third Gingles precondition has not been shown to exist. There is no allegation, much less any evidence, that non-minority voters vote as a bloc against candidates supported by minority voters. A-30 n.30.[26] Appellants submit that no such

[26]To the contrary, a comparison of the Official Directory of the Minnesota Legislature from 1969 to 1991 and the census counts of 1980 and 1990 shows that several "people of color" have been elected to the Minnesota Legislature from districts having a white majority voting population. Cf. Overton, 871 F.2d at 544 n.61 (majority support for minority candidates defeated showing of racially polarized voting). In 1972 and 1976, a African-American was elected to the Minnesota Senate from a white suburb of Minneapolis. In 1976, 1980, and 1982, an Hispanic was elected to the Minnesota Senate from a suburb of St. Paul where Hispanics were a minority of the population. In 1968, 1970, 1972, and 1974, a Native American was elected to the Minnesota House from a district in which Native Americans are a minority of the population. In 1972, 1974, 1976, and 1978, an African-American was elected to the Minnesota House from a white suburb of Minneapolis. In 1979, an Hispanic was elected to the Minnesota House from a district in St. Paul in which Hispanics were a minority of the population.

Under the 1982 legislative redistricting plan, the election of minority representatives from districts which do not have a majority minority population continued. In 1980, 1982, and 1984, an African-American was elected to the Minnesota House from a district in Minneapolis having a total African-American

showing could be made.

The burden is on parties challenging a redistricting plan to show that all three of the Gingles requirements exist. No party to this action has alleged a Voting Rights Act violation with regard to Chapter 246 and no attempt was made to show that the Gingles requirements were satisfied. The federal court, acting sua sponte in search of a Voting Rights Act violation, also failed to make any such showing and, indeed, failed even to apply the Gingles requirements. Accordingly, the federal court's finding of a Voting Rights Act violation should be reversed as both clearly erroneous and contrary to law. See Romero, 883 F.2d at 1427 n.16; McNeil, 851 F.2d at 942.

B. The Record Does Not Support the Federal Court's Finding of a Voting Rights Act Violation.

Even were the Gingles test satisfied or not applicable here, the federal court's finding of a voting rights violation is without any factual support.[27] In addition to meeting the three preconditions set forth in Gingles, a party challenging a redistricting plan under Section 2 of the Voting Rights Act must

population of only 36 percent. In 1986, 1988, and 1990, another African-American was elected from the same district. In 1990, an American Indian was elected to the Minnesota Senate from a district in which the Native American population was 7 percent; an Hispanic was elected to the Minnesota House from a suburb of Minneapolis where Hispanics were less than 1 percent of the population; and an Hispanic was elected to the Minnesota House from a district in St. Paul having an Hispanic population of only 13 percent.

[27]As Judge MacLaughlin noted in his dissent, the majority reached its conclusions on the voting rights issues without the benefit of briefing or oral argument on the voting rights violations it purports to find. A-62 n.3. No evidentiary hearings were held on the voting rights issue and appellants were afforded no opportunity to address the "evidence" on which the federal court's finding of a voting rights violation turns.

further demonstrate that "as a result of the challenged practice or structure plaintiffs do not have an equal opportunity to participate in the political processes and to elect candidates of their choice." Gingles, 478 U.S. at 44 (quoting S. Rep. No. 97-417, 28 (1982)); see also Jeffers v. Clinton, 730 F. Supp. 196, 205 (E.D. Ark. 1989), aff'd, 111 S. Ct. 662 (1991).

The Court noted in Gingles that a number of factors may be relied upon in showing a diminution of minority political opportunity. It identified, however, certain overriding limits to the means by which Section 2 violations may be proved:

> First, electoral devices . . . may not be considered per se violative of § 2. Plaintiffs must demonstrate that, under the totality of the circumstances, the devices result in unequal access to the electoral process. Second, the conjunction of an allegedly dilutive electoral mechanism and the lack of proportional representation alone does not establish a violation. Third, the results test [set forth in Section 2 and its legislative history] does not assume the existence of racial bloc voting; plaintiffs must prove it.

Gingles, 478 U.S. at 46 (citations omitted). In finding a Voting Rights Act violation, the federal court majority disregarded each of these three basic principles of voting rights jurisprudence. A-64 to A-67.

The federal court overstepped the first of these limits by, in effect, finding a per se violation of the Voting Rights Act based on the fact that Chapter 246 did not create a super-majority minority senate district in Minneapolis. See A-38 to A-39; A-65. Indeed, as Judge MacLaughlin noted in his dissent, "The majority's holding is, in effect, a conclusion that a redistricting plan that does not contain a super-majority minority senate district in Minneapolis

is an electoral device that is per se violative of Section 2." A-65.[28] Whatever the merits of creating a super-majority minority senate district may be, the absence of such a district may not be considered a per se violation of Section 2. See Quilter v. Voinovich, Court File No. 5:91-CV-2219 slip op. at 13 (N.D. Ohio March 19, 1992) ("Defendants have not and cannot cite to a single case, involving violations of § 2 of the Voting Rights Act, that stands for, or even lends support to, its proposition that federal law, in the absence of a proven § 2 violation, requires per se creation of majority-minority districts wherever possible.").[29]

The federal court violated the second limiting principle articulated in Gingles by relying heavily on the lack of proportional representation in Minneapolis in finding a violation of Section 2. A-33 to A-34. This alleged lack of proportionality does not constitute a violation of Section 2 of the Voting Rights Act. Section 2 specifically cautions against resting findings of Voting Rights Act violations on the lack of proportional representation. 42 U.S.C. § 1973(b). Rather, the Voting Rights Act seeks only to secure for minorities the same opportunity as other segments of the electorate to "participate in the political process and to elect representatives of their choice." Id. (emphasis added). The federal court's assumption that minority voters would always choose minority representatives is both improper and

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[28] In fact, the federal court's plan does not contain a senate district in which a majority of the voters are members of a minority group. Table 3-2, A-383 to A-384.

[29] The National Association for the Advancement of Colored People unanimously endorsed Chapter 246, with corrections, over a plan which created a senate district of the sort adopted by the federal court. See A-366; A-368.

unwarranted.[30]

The federal court ignored the third limiting principle set forth in Gingles by assuming, rather than requiring the plaintiffs to prove, the existence of racial bloc voting. The existence of racial bloc voting is, as Gingles recognizes, "a key element of a vote dilution claim." Gingles, 478 U.S. at 55. The federal court admits that the record contains no statistical data attempting to correlate voting patterns with the race of voters and candidates. A-30 n.30. In lieu of specific statistical data, the federal court accepted as probative of the existence of racial bloc voting a sweeping generalization contained in a law review article that racial bloc voting is "all but inevitable in the vast majority of cases." A-30 n.30. As Judge MacLaughlin notes, "The majority's assumption that racial bloc voting is 'all but inevitable' in this case . . . is precisely the assumption that the Supreme Court and the legislative history accompanying Section 2 forbid. The broad, generalized statements of commentators cannot substitute for evidence of racially polarized voting." A-67.

Notwithstanding the federal court's misinterpretation and misapplication of the relevant law regarding Section 2 of the Voting Rights Act, even on its own terms the federal court has not demonstrated that "under the totality of the circumstances," the absence of a super-majority minority district has resulted in unequal access to the electoral process for minorities.

The federal court relied on various pieces of questionable "evidence" in finding that a Voting Rights Act violation existed which Chapter 246 failed to remedy. A-33 to A-37. It is

[30]It would likewise be inappropriate and incorrect to assume that non-minority voters in Minnesota would always elect non-minority representatives. See supra note 26.

inconceivable that any conclusion about minority access to the electoral process could reasonably be drawn today from a provision of the Minnesota Constitution restricting voting rights to white people which was repealed more than a century ago. Similarly, judicial findings in a school desegregation case from the 1970s can not be presumed to reflect accurately the educational status of a minority population nearly twenty years after the implementation of court-ordered desegregation, let alone be deemed authoritative in predicting how the educational status of minorities in Minnesota has influenced their access to the electoral process.[31] The newspaper article reflecting performance gaps between minority and majority students in Minneapolis which the federal court cited is telling; the court's reliance on this irrelevant hearsay highlights the absence of any true evidence of a Voting Rights Act violation in the record. See also A-65.

The federal court also based its finding of a Voting Rights Act violation on the fact that the number of minority legislators

[31]Were the school desegregation case relevant, it would support a finding of no discrimination in Minneapolis. The case was dismissed in 1983 when the federal district court concluded that the School Board would maintain desegregated schools on its own accord:

> The Court is now convinced that the majority, if not all, of the School Board and the Superintendent and his staff will support the constitutional rights of the students and will respect the rights of all of our citizens, including students, to the equal protection of the law as required by the Constitution.
>
> The Court believes and finds that the District should have the opportunity for autonomous compliance with constitutional standards, that the State Department of Education should and will monitor the implementation of the long range plan which includes integration/desegregation and that the North-Edison exchange program satisfies constitutional standards.

ABA-66.

from Minneapolis is not proportional to the percentage of minorities living in Minneapolis. As discussed previously in this brief, the federal court's inference that because the number of minority legislators from the City of Minneapolis is not proportional to the City's minority population, minority voters must necessarily have been denied an equal opportunity to elect the "representatives of their choice" is unwarranted. A piece of evidence essential to that conclusion, namely that minority voters, if given the opportunity to do so, would always choose a minority candidate over a non-minority candidate, is completely lacking in this case. In addition to being logically faulty, the federal court's conclusion violates the second principle of voting rights jurisprudence set forth in Gingles. See A-66.

Finally, the federal court relied heavily on its finding that Chapter 246 did not pit incumbent Minneapolis state senators against each other. Absent evidence that the incumbent representatives have failed to represent minority interests, this finding does not show that minority voters have been denied an equal opportunity to elect representatives of their choice. In any event, the evidence shows that, in creating the best minority districts possible, the authors of Chapter 246 did pair incumbent representatives. Incumbents were paired in one of the three minority-opportunity House districts in Minneapolis.[32] In a second of the minority-opportunity House districts in Minneapolis, House District 58B, the incumbent is an African-American and pairing of this incumbent would not seem to favor minority voters.

Rather than being based on incumbent protection, the evidence shows that Chapter 246 was drafted to create the best

[32]Chapter 246 paired two Democratic-Farmer-Labor representatives in House District 61B.

minority-opportunity districts possible. Working together, the House and Senate authors drew districts that maximized the concentrations of minority populations, held hearings on these minority district "footprints," and sought advice from minority group leaders and minority group members who had been elected to public office. See A-393 to A-409; A-412 to A-420; A-436 to A-439.[33] These "footprints" were the starting point for the rest of the plan which became Chapter 246. See A-408 to A-409; A-418 to A-419. The quality of the work done by the Legislature in creating Chapter 246 is reflected by the unanimous endorsement which the National Association for the Advancement of Colored People gave to Chapter 246 with its technical corrections. A-366; A-368. The minority-opportunity districts created in Chapter 246 were not substantively altered by the state court in its plan.

The Legislature, through its open and extensive efforts to work with the minority communities, was in a much better position than the federal court, which reached its conclusions on no evidentiary record, to determine which districts would best enhance the effectiveness of minority voters.

The issue created by the federal court in this action is not, however, which plan creates the best minority-opportunity districts. The issue is whether the Legislature, which is charged with the responsibility and discretion for crafting legislative districts, adopted a plan which has been proven to violate Section 2 of the Voting Rights Act. As Judge MacLaughlin pointed out in dissent:

[33]The authors sought advice from, among others, the St. Paul Urban League, the Urban Coalition of Minneapolis, the Minnesota Indian Affairs Council, the Spanish-Speaking Affairs Council, the Council on Black Minnesotans, the Minnesota Council on Asian-Pacific Affairs, and the National Association for the Advancement of Colored People as well as from minority group members in the Legislature and the city council presidents of Minneapolis and St. Paul, both of whom are African-American. See id.

> [N]o party to this suit has alleged, much less proved, that Chapter 246 violates section 2 of the Voting Rights Act; rather, plaintiffs have asserted only that their proposed plan "better" preserves the political power of minorities. There is no requirement, however, that a lawfully enacted reapportionment plan that complies with the Voting Rights Act be set aside in favor of an allegedly "better" plan.

A-63.

The right of every citizen of the United States to vote and to have equal access to the political process is a right of extraordinary dimension in our democracy. Section 2 of the Voting Rights Act is an effective enforcement tool which has helped transform significantly the political power of minority citizens. However, in this case, despite a violation having not been alleged, briefed, argued, or evidenced in any way by the parties, section 2 of the Voting Rights Act was used by the federal court to substitute its policy interests for those of the State of Minnesota acting through the legislature and the judiciary. In so doing, the federal court ignored the test established in Thornburg v. Gingles and relied upon meaningless "evidence" which no party was even permitted to rebut. In fact, no evidence exists which supports a violation of section 2 of the Voting Rights Act. The record contains no evidence to support a conclusion that the lack of a super-majority minority senate district in the past has deprived minorities of equal access to the political process. More importantly, the record contains no evidence to support a conclusion that Chapter 246 or the state court's legislative redistricting plan will lessen the opportunity of minorities to participate in the political process and to elect representatives of their choice in the future.

Under these circumstances, the violation of the Voting Rights Act is merely a pretext to substitute the will of the federal court for the policy choices made by the State of Minnesota. Use of the Voting Rights Act for these purposes trivializes the law's important principles and will ultimately undermine the fundamental right of political access protected by the Act. The federal court's judgment adopting a legislative redistricting plan is clearly erroneous and should therefore be vacated.

IV. THE FEDERAL COURT'S LEGISLATIVE AND CONGRESSIONAL REDISTRICTING PLANS FAILED TO INCORPORATE STATE POLICY TO THE EXTENT POSSIBLE.

For the reasons discussed previously, the federal court erred by not deferring to the state court action and judgment and in finding a Voting Rights Act violation. Even were the federal court somehow justified in the course it took, however, the judgment it entered should be reversed because its legislative and congressional redistricting plans fail to adhere to discernible Minnesota redistricting policy.

A. The Federal Court's Legislative Redistricting Plan Was Not Based on Chapter 246.

Even assuming the federal court correctly determined that a portion of the state court redistricting plan violates the Voting Rights Act, the federal court erred in redistricting the entire state from scratch rather than basing its plan on Chapter 246. See A-68. A court which draws a redistricting plan must follow discernible state policy to the fullest extent possible. Upham v. Seamon, 456 U.S. 37 (1982) (per curiam); White v. Weiser, 412 U.S. 783 (1973). If a federal or state court finds that a redistricting law violates constitutional or statutory requirements, the court must

adopt a plan which cures the violations but incorporates as much of the law as is possible. Upham, 456 U.S. at 43 (Voting Rights Act violations in two districts); Weiser, 412 U.S. at 795 (excessive population deviations throughout entire plan).[34]

The principle behind the doctrine adopted in Weiser and Upham is clear and sound. Redistricting is an inherently political process which is the responsibility of the state. Courts, particularly federal courts, should intrude on this process only to the extent necessary to cure constitutional and statutory violations. Courts should avoid assuming political responsibilities unnecessarily; courts which exceed this limited role harm the status of the judiciary as an independent, nonpartisan branch of government. See Wise v. Lipscomb, 437 U.S. 535, 539-40 (1978).

The federal court in this case chose to ignore Chapter 246 and the doctrine of Weiser and Upham ostensibly due to (1) technical drafting defects in Chapter 246 and (2) the claimed Voting Rights Act violation in one district in the City of Minneapolis. A-52 n.50. Neither of these stated rationales excused the federal court from basing its remedial plan on the policies set forth in Chapter 246, modified only to the extent necessary to cure any constitutional or statutory defects.

In Weiser, a federal court found that a redistricting law had excessive population deviations. Two redistricting plans were proposed which cured the defects. One was based on a defective state statute while the other was totally independent of the state law. The federal district court chose the redistricting plan which

[34]Courts have applied the doctrine established in Weiser and Upham in a variety of cases. E.g., Cook v. Luckett, 735 F.2d 912, 918 (5th Cir. 1984); Buskey v. Oliver, 574 F. Supp. 41, 43 (M.D. Ala. 1983); Farnum v. Burns, 561 F. Supp. 83, 92 (D.R.I. 1983); Rybicki v. State Bd. of Elections, 574 F. Supp. 1082, 1125 n.108 (N.D. Ill. 1982).

was not based on state law. 412 U.S. at 793-94. On appeal, the Court opined: "[A] federal district court, in the context of legislative reapportionment, should follow the policies and preferences of the State, as expressed in statutory and constitutional provisions." Id. at 795. Because the federal court had rejected the plan that was based on state law, the Court concluded that the federal court had erred. Id.

In this case, the Court is presented with a situation which is nearly identical to the facts in Weiser. The Minnesota Legislature enacted Chapter 246, the state's redistricting law. Chapter 246 is the type of expression of state policy this Court contemplated in Weiser.[35] Just as in Weiser, the redistricting law was flawed; Chapter 246 contained a variety of technical defects which required clarification or correction. Also as in Weiser, the federal court was presented with a plan which was based on Chapter 246 but corrected its defects: The legislature's technical corrections bill, Senate File 1596, was presented to the federal court for consideration. SA-120. Rather than base its plan on Chapter 246, however, the federal court created a new plan that is entirely independent of and inconsistent with Chapter 246.

Not only has the federal court ignored state policy as reflected in Chapter 246, it has also ignored state policy as reflected in the state court's legislative redistricting plan. The state court plan, which followed Chapter 246 except where necessary to correct its technical deficiencies, see A-258 to A-259, was also presented to the federal court, see A-39. The state court's modification of Chapter 246 properly recognized the important

[35]The federal court erroneously concluded that state redistricting policy was only found in the state constitution and in a concurrent resolution of the Minnesota Legislature, but not in the state law, Chapter 246. A-43 to A-44; A-52.

state policy decisions that had been embodied in Chapter 246. Given this Court's express encouragement of such state court actions, see Scott v. Germano, 381 U.S. 407, 409 (1965) (per curiam), the federal court was not free to ignore the clear expression of state policy found in the state court redistricting plan. But that is exactly what the federal court did by drawing an entirely new plan and ignoring state policy decisions.

The federal court's finding of a Voting Rights Act violation likewise did not justify its total disregard for Chapter 246 and the state court's plan. The federal court's remedy of adopting a completely different plan is far more drastic than is required to cure the alleged defect of failing to create a super-majority minority senate district in Minneapolis. As the Court stated in Weiser, the remedial powers of an equity court are limited to the task at hand. 412 U.S. at 796; see, e.g., Sixty-seventh Minnesota State Senate v. Beens, 406 U.S. 187, 198 (1972) (federal court may not reduce size of legislature in redistricting action).

In Upham v. Seamon, 456 U.S. 37 (1982) (per curiam), this Court reversed a federal district court order that had reapportioned both valid and invalid districts. In reversing, the Court relied heavily on Weiser and also stated that, in the absence of a constitutional or Voting Rights Act violation, a "district court's modifications of a state plan are limited to those necessary to cure any constitutional or statutory defect." Id. at 43 (emphasis added). See also Whitcomb v. Chavis, 403 U.S. 124, 160-61 (1971).

Here, the federal court was limited by Weiser and Upham to redistricting only those districts that it found to be invalid. If a minority opportunity senate district of the form drawn by the federal court was required, it could have been created easily by adjusting some, but certainly less than all, of the eighteen legislative districts in Minneapolis. Instead, the federal court chose

to redraw the boundaries of all 201 districts in the State of Minnesota.

Because the federal court's legislative redistricting plan is not based on Chapter 246 nor on the state court's legislative redistricting plan, the federal court's judgment should be reversed.

B. The Federal Court's Congressional Redistricting Plan Was Not Based on Senate File 1597.

The federal court was also required to follow state policy in drawing the boundaries of the congressional districts. See Weiser, 412 U.S. at 795. In this case, state congressional redistricting policy is embodied in Senate File 1597, which passed both houses of the state legislature. The federal court ignored the boundaries set forth in that bill.

The federal court concluded that Senate File 1597 was not state policy because Governor Carlson vetoed it. A-53. The federal court relied on Duxbury v. Donovan, 138 N.W.2d 692, 698 (Minn. 1965), for this conclusion, but that case only addresses whether the governor has the power to veto a redistricting bill. Id. ("Our only duty in this situation is to decide whether the power to veto exists with respect to apportionment legislation.").

The congressional redistricting plan adopted by the Minnesota Legislature constitutes state policy, even though it was vetoed. This Court, in Weiser, expressly stated that "state policy", includes "statutory and constitutional provisions or . . . the reapportionment plans proposed by the state legislature." 412 U.S. at 795 (emphasis added). Other courts have likewise recognized that a plan embraced by a state body need not be adopted as law to constitute state policy. See, e.g., Wise v. Lipscomb, 437 U.S. 535, 539-40 (1978); Shayer v. Kirkpatrick, 541 F. Supp. 922, 932 (W.D. Mo.), aff'd sub nom. Schatzle v. Kirkpatrick, 456 U.S. 966

(1982); Donnelly v. Meskill, 345 F. Supp. 962, 964-65 (D. Conn. 1972); cf. Legislature of Cal. v. Reinecke, 492 P.2d 385 (Cal. 1972).

Because the federal court had before it a congressional redistricting plan adopted by the Legislature that met all federal and state constitutional requirements, it was not at liberty to create an entirely new plan of its own design.[36] At a minimum, Weiser requires an attempt to square a court drawn plan with the legislatively drafted plan. The federal court's congressional redistricting plan violates the doctrine established in Weiser and, as a result, the court's judgment should be reversed.

CONCLUSION

The bright line abstention rule in redistricting challenges, set forth twenty-seven years ago in Scott v. Germano, has stood the test of time. The important principles behind the rule--federalism, state sovereignty in election choices, and avoidance of conflicting judgments--remain sound today. The determined actions taken by the federal court in this case, and the significant impact of those actions on the State of Minnesota, alone present to this Court a highly effective argument why Scott v. Germano remains sound as a matter both of law and policy.

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[36]The federal court and appellees do recognize the principle that courts must be guided by state policy in redistricting. The only evidence of state policy which the federal court and appellees find acceptable, however, are the state constitution and the concurrent legislative resolutions establishing criteria for redistricting. These concurrent resolutions, one for congressional redistricting and one for legislative redistricting, were passed by both houses of the legislature but do not constitute state law because they were not enacted as bills and were not signed by the governor. The same deference accorded to these legislative pronouncements should have been accorded to the congressional redistricting plan which was also adopted by both houses of the Minnesota Legislature.

As amply demonstrated by this case, the bright line abstention rule is fraying at the edges as a result of federal courts that disagree with the states' redistricting policy choices. Most egregious is the use of a bulwark intended to protect political access by minority citizens, the Voting Rights Act, as a pretext to impose the will of the federal court on the states. If a federal court is permitted to act sua sponte and in complete disregard of the Gingles test to vacate an enacted and approved state plan, the Voting Rights Act will be undermined and Scott v. Germano will be rendered meaningless.

The Court should reaffirm the bright line abstention rule in Scott v. Germano and the important federalism principle that underlies the rule by (1) reversing the February 19, 1992, order of the federal district court, (2) vacating the judgment in its entirety, and (3) remanding with instructions to dismiss the case.

DATED: May 28, 1992.

Respectfully submitted,

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No. 91-1420

In The
Supreme Court of the United States
October Term, 1991

JOAN GROWE, SECRETARY OF STATE OF THE STATE OF MINNESOTA, ET AL.,
Appellants,

vs.

JAMES EMISON, ET AL.,
Appellees.

Appeal from the United States District Court for the District of Minnesota

APPENDIX TO BRIEF OF APPELLANTS

APPENDIX TO BRIEF OF APPELLANTS
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STATE OF MINNESOTA
SPECIAL REDISTRICTING PANEL

C8-91-985

Patricia Cotlow, Phillip Krass
Sharon LaComb, James Stein, and
Theodore Suss, individually and
on behalf of all Citizens of
Minnesota similarly situated,

Plaintiffs,

and

John Walker, Howard Miller,
Don Sudor, and Nkajlo Vangh,

Plaintiff-Intervenors,

vs.

FINAL ORDER

Joan Growe, Secretary of State
of Minnesota; and Patrick H.
O'Connor, Hennepin County Auditor,
individually and on behalf of all
Minnesota county chief election
officers,

Defendants.

and

The Seventy-seventh Minnesota
State House of Representatives
and the Seventy-seventh Minnesota
State Senate,

Defendant-Intervenors.

I

Background

On June 4, 1991, the Minnesota Supreme Court appointed the undersigned panel to hear and decide this state legislative and congressional redistricting action on its merits. This charge has been met with respect to state legislative redistricting. On December 9, 1991, subject to the federal court's injunction in Emison v. Growe, No. 4-91-202 (D. Minn. Dec. 5, 1991), we issued a final and appealable partial judgment on the state legislative redistricting plan. Cotlow v. Growe, No. C8-91-985 (Minn. Sp. Redistricting Panel, Dec. 9, 1991). After the United States Supreme Court vacated the federal court's injunction, Cotlow v. Emison, __ U.S. __ (Jan. 10, 1992) (No. 91-1084), we formally entered final judgment as to state legislative redistricting on January 31, 1992.

With respect to congressional redistricting, this action has not yet been concluded on its merits. On September 13, 1991, we adopted final criteria for congressional plans and provided a format for submission of plans in the event the legislature failed to enact a constitutionally valid congressional apportionment plan. From

mid-September to early December 1991, the panel reserved substantive consideration of alternative congressional plans until legislative and executive consideration was complete.

On December 5, 1991, the federal court issued its order enjoining the parties to this action from implementing or enforcing any state court redistricting order, specifically enjoining the parties from participating in the state proceedings, and enjoining this panel from going forward on a congressional redistricting plan. Subject to the injunction, we ordered submission of proposed plans by January 17, 1992. This later date was selected to allow the legislature full opportunity to enact congressional redistricting legislation and to spare the parties potential conflict with the federal panel's injunction.

Although the Minnesota Legislature, on January 9, 1992, passed a congressional redistricting plan based on the 1990 federal census, the governor properly exercised his veto and the plan did not become law. See Minn. Const. art. IV, § 23 (providing governor with veto power and requiring two-thirds vote of each house to override); Duxbury v. Donovan, 272 Minn. 424, 432-33, 138 N.W.2d 692, 698 (1965). When the special session ended without enactment of a congressional plan and the injunction was vacated by the United States Supreme Court, this panel scheduled and conducted a procedural and motion hearing on February 17, 1992, to review the status of congressional redistricting and to resolve pending motions.

As stated in our March 3 order, the federal panel's issuance on February 19, 1992 of a congressional redistricting plan and its corresponding injunction imposed additional legal and jurisprudential constraints on publishing a state-court congressional plan. For a number of reasons, and particularly because an appeal of the federal panel's judgment was filed immediately with the

United States Supreme Court, dismissal of this action was inappropriate.

On March 11, 1992, the Supreme Court granted a temporary and limited stay of the Emison court's judgment affecting state legislative redistricting. Growe v. Emison, No. A-671 (U.S. March 11, 1992). The Supreme Court noted probable jurisdiction on March 30, 1992 without dissolving the stay. Pending a final decision on that appeal, this court's legislative redistricting plan will govern the 1992 elections.

Implementation of the federal panel's congressional redistricting plan has not been similarly stayed. Pending review by the United States Supreme Court and pursuant to the federal court's February 19 judgment, the federal panel's plan will control Minnesota's 1992 congressional elections.

The Supreme Court's noting probable jurisdiction over the complex jurisdictional questions that have evolved in this redistricting process puts the ultimate effectiveness of the federal panel's plan in question. Because the Supreme Court will ultimately determine this issue and has designated which plans will apply in the interim, publication of our congressional plan will not create undue confusion or exacerbate any difficulties of federal-state interaction.

For these reasons and to fulfill our charge of deciding this action on the merits and to allow a complete record on review, we adopt, subject to the district court's injunction and the Supreme Court's order of March 11, 1992, a plan of congressional redistricting created by this court.

II

Congressional Plan

The population shifts of the past decade have created population deviations in the 1982 congressional redistricting plan that exceed 22% in district 3 and 34% in the districts' overall range, in violation of the U.S. and Minnesota Constitutions' strict population standards. The plan we adopt eliminates these unconstitutional defects. As with the proposed plans submitted to the court and that created by the federal panel, the plan contains five districts of absolutely equal and "ideal" population.[1] The three remaining districts each exceed the ideal district size by only one person. The plan thus complies with Article 1, § 2 of the United States Constitution mandating equal representation and requiring districts to be apportioned as nearly to equal as is practicable. See Wesberry v. Sanders, 376 U.S. 1, 7-8 (1964). See also Minn. Const. art. IV, §§ 2, 3.

Some communities and counties have to be divided to achieve near-equal apportionment. Our congressional plan substantially minimizes the number of municipal and county splits while preserving the integrity of Minneapolis and St. Paul as distinct communities. Care was taken to avoid splitting any of the larger outstate cities between two districts. Our plan splits only 10 counties and 11 cities and townships for a total of twenty-one splits, far fewer than the plans proposed by the defendant-intervenors (28 total) and plaintiff-intervenors (40) and the plan created by the federal court (33).

---

[1] Dividing Minnesota's total census population by the number of its apportioned congressional seats, eight, yields an ideal district size of 546,887 people, with three people remaining.

To the extent possible, the plan segregates urban, suburban, and rural areas into discrete districts. Although not constitutionally compelled, the compactness of each district was also considered in this panel's attempt to create the most geographically and demographically consistent and convenient districts possible. See Minn. Const. art. IV, § 3.

As the plaintiff-intervenors' plan illustrates, greater compactness could have been achieved at the expense of splitting political subdivisions. Our plan balanced these two criteria, and, without expressly endorsing one approach to the exclusion of others, we note that, using the federal court's formula adopted from Polsby and Popper, The Third Criterion: Compactness as a Procedural Safeguard Against Gerrymandering, 9 Yale Law & Policy Review 301 (1991), our plan achieves a higher compactness percentage (.394) than either the 1982 plan (.347) or the current federal court plan (.346).

The parties have neither challenged the 1982 congressional plan under the Voting Rights Act nor presented any evidence of possible violation. By maintaining two primarily urban districts, the plan adopted attempts, in compliance with the Act, to avoid any unnecessary divisions of core minority populations.

Maps and population tables of the plan are attached as Exhibits A - F. Should any discrepancies exist, the census tract descriptions, which are on file, shall be deemed controlling. To insure compliance with this court's judgment determining the legislative redistricting plan of the State of Minnesota, and, if necessary, to oversee implementation of the contingent plan of congressional redistricting adopted by this court, we retain jurisdiction over this matter.

By separate order, we tax costs of approximately $28,000 against Joan Growe, Secretary of State of the State of Minnesota.

These are the total costs expended by the State panel for the legislative and congressional redistricting.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: April 15, 1992. BY THE COURT

/s/
Honorable Harriet Lansing

/s/
Honorable Kenneth J. Maas

/s/
Honorable William E. Walker

EXHIBIT A

1992 Congressional Districts

State Court Plan

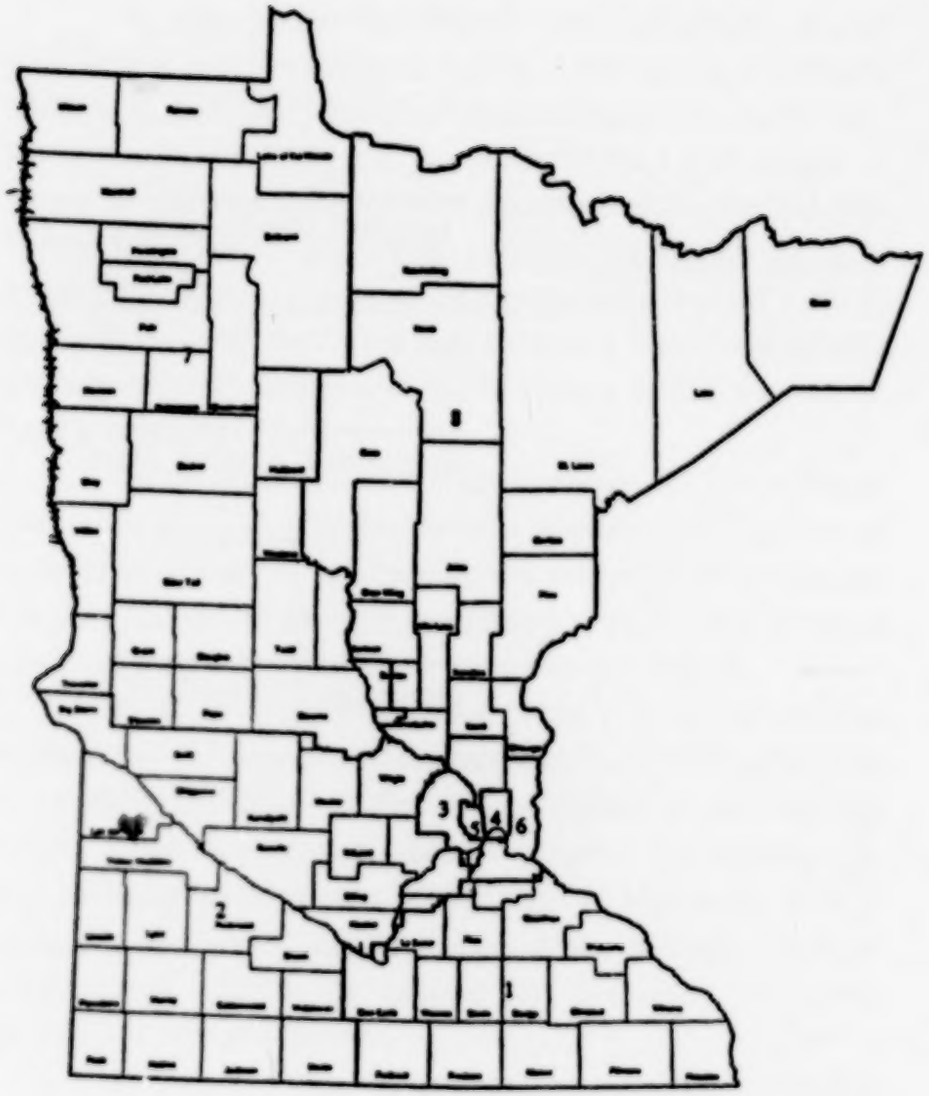

EXHIBIT B

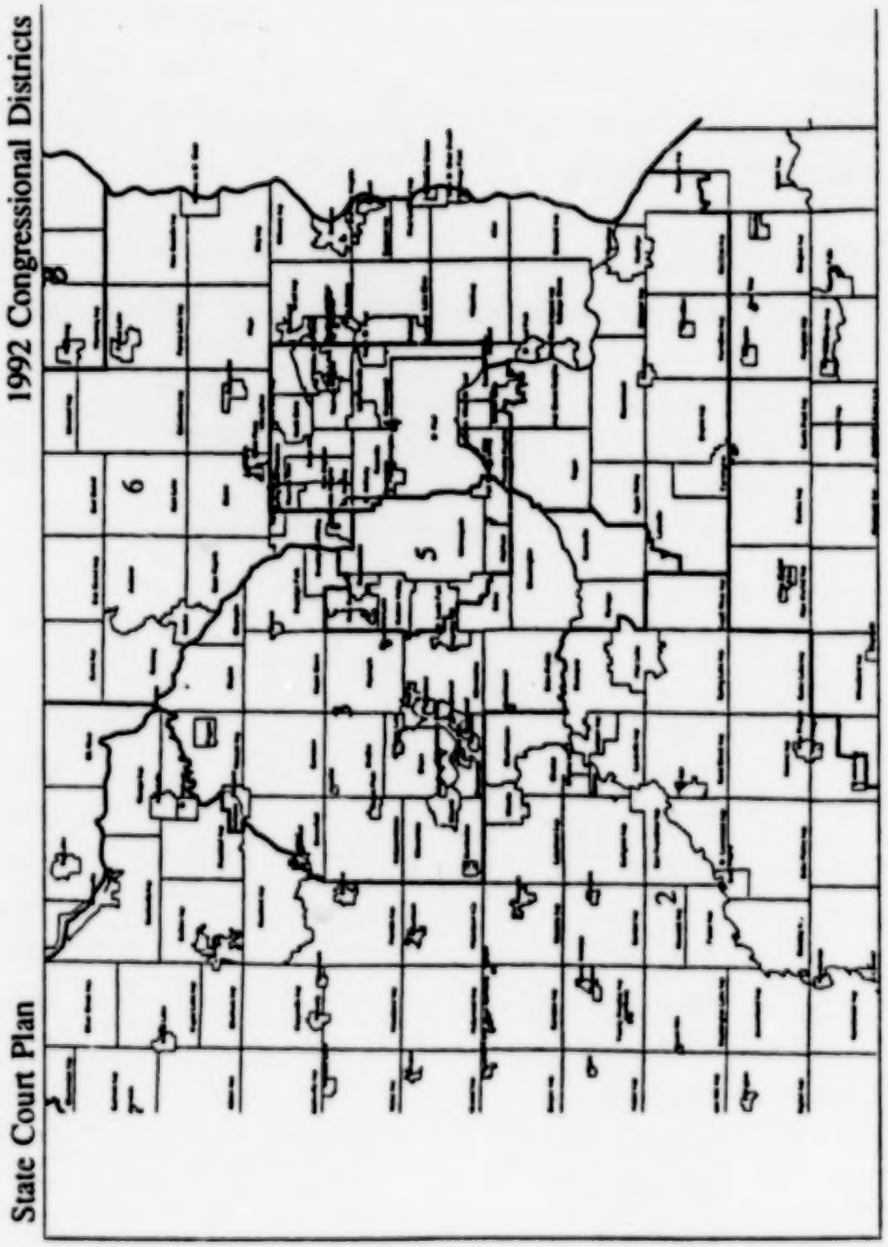

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EXHIBIT C

Support Name: POLITICAL SUBDIVISION SPLITS
Plan Type: CONGRESS
Plan name: STPANEL18
Date: April 03, 1992
Time: 10:27 AM
User: stpanel

Number of times a subdivision is split into more than one district:

Counties:	10.00
MCDs:	11.00
VTDs:	11.00

Counties Split:

County	District
Benton	007
Benton	008
Dakota	001
Dakota	003
Dakota	004
Dakota	006
Hennepin	002
Hennepin	003
Hennepin	004
Hennepin	005
Le Sueur	001
Le Sueur	002

Morrison	007
Morrison	008
Nicollet	001
Nicollet	002
Scott	001
Scott	002
Scott	003
Sherburne	007
Sherburne	008
Stearns	002
Stearns	007
Wright	002
Wright	003

MCDs Split:

County	MCD	District
Ramsey	Blaine city	004
Anoka	Blaine city	006
Stearns	Eden Lake township	002
Stearns	Eden Lake township	007
Hennepin	Edina city	003
Hennepin	Edina city	005
Dakota	Inver Grove Heights city	004
Dakota	Inver Grove Heights city	006
Dakota	Lakeville city	003
Dakota	Lakeville city	006
Le Sueur	Lanesburgh township	001
Le Sueur	Lanesburgh township	002
Morrison	Motley city	007
Cass	Motley city	008
Sherburne	Palmer township	007

Sherburne	Palmer township	008
Dakota	Ravenna township	001
Dakota	Ravenna township	006
Ramsey	Spring Lake Park city	004
Anoka	Spring Lake Park city	006
Ramsey	White Bear Lake city	004
Washington	White Bear Lake city	006

VTDs Split:

County	MCD	VTD	District
Dakota	31076	INVER GROVE HGHTS. P-1	004
Dakota	31076	INVER GROVE HGHTS. P-1	006
Dakota	31076	INVER GROVE HGHTS. P-5	004
Dakota	31076	INVER GROVE HGHTS. P-5	006
Dakota	35180	LAKEVILLE P-3	003
Dakota	35180	LAKEVILLE P-3	006
Dakota	53260	RAVENNA TWP.	001
Dakota	53260	RAVENNA TWP.	006
Hennepin	18188	EDINA P-2	003
Hennepin	18188	EDINA P-2	005
Hennepin	18188	EDINA P-7	003
Hennepin	18188	EDINA P-7	005
Hennepin	18188	EDINA P-16	003
Hennepin	18188	EDINA P-16	005
Hennepin	18188	MCD+ EDINA P-18	003
Hennepin	54214	MCD+ EDINA P-18	005
Le Sueur	35468	LANESBURGH TWP.	001
Le Sueur	35468	LANESBURGH TWP.	002

Sherburne	49534	PALMER TWP.	007
Sherburne	45934	PALMER TWP.	008
Stearns	18098	EDEN LAKE TWP.	002
Stearns	18098	EDEN LAKE TWP.	007

Report Name: District Populations
Plan Type: CONGRESS
Plan name: STPANEL18
Date: March 25, 1992
Time: 12:04 PM
User: stpanel

EXHIBIT D

District	Total Pop	Abs Dev	% Dev	Total 18+ Pop:
001	546,887	0	0.00	399,240
002	546,888	1	0.00	390,146
003	546,888	1	0.00	401,451
004	546,887	0	0.00	412,608
005	546,887	0	0.00	435,052
006	546,887	0	0.00	377,110
007	546,887	0	0.00	395,116
008	546,888	1	0.00	397,593
Plan Total:	4,375,099			3,208,316

Mean Deviation is: 0
Mean Percent Deviation is: 0.00

Largest Positive Deviation is: 1 0.00 Percent
Largest Negative Deviation is: 0 0.00 Percent

Overall Range: 1 0.00 Percent

EXHIBIT E

Report Name: MINORITY REPORT - TOTAL POPULATION
Plan Type: CONGRESS
Plan name: STPANEL18 Time: 9:08 AM
Date: April 03, 1992 User: stpanel

Dist	Black	%	Indian	%	Asian	%	Hispanic	%	Other	%
001	1,706	0%	1,329	0%	6,363	1%	5,403	1%	123	0%
002	776	0%	1,888	0%	2,799	1%	5,222	1%	92	0%
003	9,605	2%	1,868	0%	11,454	2%	4,945	1%	351	0%
004	22,482	4%	4,347	1%	24,810	5%	15,615	3%	519	0%
005	50,735	9%	12,596	2%	18,924	3%	9,654	2%	888	0%
006	4,638	1%	2,890	1%	7,279	1%	5,928	1%	214	0%
007	1,160	0%	12,005	2%	2,569	0%	4,334	1%	127	0%
008	1,938	0%	11,328	2%	2,031	0%	2,783	1%	115	0%
STATE TOTAL										
	93,040	2%	48,251	1%	76,229	2%	53,884	1%	2,429	0%

EXHIBIT F

03/27/92 Page 1

Compact by District
stpanel18

DISTRICT	POLSBY-POPPER INDEX
001	0.523
002	0.416
003	0.283
004	0.566
005	0.514
006	0.255
007	0.269
008	0.326

****

Average Compactness is: 0.394
Total Perimeter in MILES is: 3,933

****

STATE OF MINNESOTA
SPECIAL REDISTRICTING PANEL
CASE NO. MX 91-001562
CASE NO. C8-91-985

Patricia Cotlow, Phillip Krass
Sharon LaComb, James Stein, and
Theodore Suss, individually and
on behalf of all Citizens of
Minnesota similarly situated,

Plaintiffs,

and

John Walker, Howard Miller,
Don Sudor, and Nkajlo Vangh,

Plaintiff-Intervenors,

vs. FINAL PROCEDURAL ORDER

Joan Growe, Secretary of State
of Minnesota; and Patrick H.
O'Connor, Hennepin County Auditor,
individually and on behalf of all
Minnesota county chief election
officers,

Defendants,

and

The Seventy-seventh Minnesota
State House of Representatives
and the Seventy-seventh Minnesota
State Senate,

Defendant-Intervenors.

The panel has received what it characterizes as a motion for reconsideration of the March 2, 1992 motion of Plaintiff-Intervenors for dismissal or, in the alternative, summary judgment. For the reasons stated in this court's Final Order dated April 15, 1992, Plaintiff-Intervenors' original motion and their motion for reconsideration is denied.

IT IS SO ORDERED.

Dated: April 30, 1992 **BY THE COURT**

/s/
Honorable Harriet Lansing
Honorable Kennth J. Maas
Honorable Willian E. Walker

STATE OF MINNESOTA

SPECIAL REDISTRICTING PANEL

MX 91-001562

Patricia Cotlow, Phillip Krass, Sharon LaComb, James Stein, and Theodore Suss, individually and on behalf of all Citizens of Minnesota similarly situated,	)	
Plaintiffs,	)	
John Walker, Howard Miller, Don Sudor, and Nkajlo Vangh,	)	
Plaintiff-Intervenors,	)	
v.	)	COMPLAINT IN INTERVENTION OF PLAINTIFF-INTERVENORS WALKER, MILLER, SUDOR, AND VANGH
Joan Growe, Secretary of State of Minnesota, and Dale G. Folstad, Hennepin County Auditor, individually and on behalf of all Minnesota county chief election officers,	)	
Defendants,	)	

The Seventy-seventh Minnesota State House of Representatives and the Seventy-seventh Minnesota State Senate,	)
Defendant-Intervenors.	)

Plaintiff-intervenors John Walker, Howard Miller, Don Sudor, and Nkajlo Vangh, for their complaint in intervention, state:

1. This complaint in intervention is filed pursuant to stipulation of the parties and order of this Court under Rule 24.

2. Plaintiff-Intervenors John Walker, Howard Miller, Don Sudor, and Nkajlo Vangh are citizens and qualified voters of the United States and the state of Minnesota. Plaintiff-intervenors Sudor and Miller live in non-metropolitan areas in Minnesota. Plaintiff-intervenor Vangh is a member of a racial minority.

3. Defendant Joan Growe is the duly elected and qualified Secretary of State and the chief election officer of the state of Minnesota, and plaintiff-intervenors concur that her duties are those described in paragraph 3 of plaintiffs' complaint.

4. Defendant Dale G. Folstad is the duly qualified auditor of Hennepin County and is its chief election officer, and plaintiff-intervenors concur with the allegations of paragraph 5 of plaintiffs' complaint to the extent they allege that defendant Folstad will fairly and adequately represent the interests of chief county election officials.

5. Plaintiff-intervenors allege that plaintiffs will not adequately represent the interests of plaintiff-intervenors nor will they adequately protect the citizens of Minnesota, but plaintiff-

intervenors concur that this action should be designated a class action with both plaintiffs and plaintiff-intervenors as class representatives.

6. Article I, section 2, of the Constitution of the United States guarantees to the citizens of each state that their votes shall be equally as effective as any other votes cast in an election and that congressional representatives shall be elected on the basis of equal representation of individual voters. Further, this provision guarantees that congressional representation shall be apportioned throughout a state in districts that are, among other requirements, of equal population.

7. Any plan of congressional districts that does not meet the constitutional standard of equal population discriminates against voters in more highly populated districts, while exaggerating the power of voters in less populated districts, in violation of rights afforded under article I, section 2, of the United States Constitution. Any action of defendants in enforcing or implementing a plan that does not meet constitutional or other legal requirements violates the rights of plaintiff-intervenors and similarly-situated citizens and voters of Minnesota.

8. Minnesota's current congressional districts were established and remain in force by continuing order of the United States District Court for the District of Minnesota in LaComb v. Growe, 541 F. Supp. 145 (D. Minn. 1982) (Civ. 4-81-414) aff'd sub nom. Orwoll v. LaComb, 456 U.S. 966 (1982).

9. The United States Department of Commerce, Bureau of Census, has issued statistical data from the 1990 census showing that the congressional districts ordered by the United States District Court for the District of Minnesota in 1982 are no longer equally apportioned.

10. The legislature of the state of Minnesota ("the

legislature") possesses state constitutional authority to prescribe the boundaries of congressional districts at their first session following each federal decennial census. Following the 1980 census, the legislature failed to establish new congressional districts in accordance with constitutional requirements. Following the 1990 census, the legislature received census data showing that congressional districts established by continuing order of the United States District Court for the District of Minnesota in 1982 are no longer equally apportioned. In its 1991 session, the legislature did not consider or pass any legislation drawing new congressional districts.

11. On information and belief, defendants intend to conduct their duties with respect to the 1992 primary and general elections for Minnesota's congressional representatives based on current congressional districts.

12. Plaintiff-intervenors intend to vote in the 1992 primary and general elections for congressional representatives. If these elections are conducted on the basis of current congressional districts, or on the basis of new districts that do not meet constitutional or other legal requirements, plaintiff-intervenors and other similarly-situated citizens and voters will be denied their constitutional or other rights.

13. Section 1 of the fourteenth amendment to the Constitution of the United States guarantees the citizens of each state that their votes shall be equally as effective as any other votes cast in a federal and state election and that state legislative representatives shall be elected on the basis of equal representation of the individual voters in a state by apportioning such representation throughout a state in legislative districts that are, among other requirements, of equal population.

14. Any plan of state legislative districts that does not

meet the constitutional standard of equal population unlawfully discriminates gainst voters in more highly populated districts, while exaggerating the power of voters in less populated districts, in violation of rights afforded under the fourteenth amendment to the United States Constitution. Any action of defendants in enforcing or implementing a plan that does not meet constitutional or other legal requirements violates the equal protection and due process rights or other rights of plaintiff-intervenors and other similarly-situated citizens and voters of Minnesota.

15. The United States Department of Commerce, Bureau of Census, has issued statistical data from the 1990 census showing that the state legislative districts ordered by the United States District Court for the District of Minnesota in 1982 are no longer equally apportioned.

16. The legislature possesses state constitutional authority to prescribe the boundaries of state legislative districts at its first session following each federal decennial census. Following the 1980 census, the legislature failed to establish new state legislative districts in accordance with legal requirements. Following the 1990 census, the legislature received census data showing that state legislative districts established by continuing order of the United States District Court for the District of Minnesota in 1982 are no longer equally apportioned. In its 1991 session, the legislature passed legislation establishing new state legislative districts. The Ramsey County District Court has ruled that the Governor's attempted veto of that legislation was invalid, so it has now become law.

17. The new state legislative districts created by the 1991 legislature do not meet constitutional and other legal requirements.

18. On information and belief, defendants intend to conduct their duties with respect to the 1992 primary and general

elections for state legislative representatives based upon the new state legislative districts created by the 1991 legislature.

19. Plaintiff-intervenors intend to vote in the 1992 primary and general elections for state legislative representatives. If these elections are conducted on the basis of the new state legislative districts created by the 1991 legislature, plaintiff-intervenors and other similarly-situated citizens and voters will be denied their constitutional or other rights.

20. The legislature has represented in this action and in a parallel redistricting action pending in United States District Court for the District of Minnesota, entitled Emison, et al. v. Growe. et al., Court File No. 4-91-202, that in January 1992 it will adopt legislation that will become law establishing new congressional districts and amendatory legislation correcting constitutional or other legal deficiencies in the new state legislative redistricting plan. Based upon those representations, by a Memorandum Opinion and Order, dated August 21, 1991, the federal panel in Emison has directed that the legislature's plans for congressional and state legislative redistricting be presented to the federal panel on or before January 20, 1992.

WHEREFORE, plaintiff-intervenors pray for the following relief:

a. That this Court issue an order fixing a reasonable time within which the legislature may adopt congressional and state legislative redistricting plans meeting constitutional and other legal requirements and staying further proceedings in this Court pending compliance with such order.

b. That this Court will permit plaintiff-intervenors to participate with the other parties in any consideration and review by the Court of laws

establishing new congressional districts or state legislative districts, or both.

c. That if this Court considers and establishes plans for congressional districts or state legislative districts, or both, the Court will permit plaintiff-intervenors to participate in all aspects of the case, including assistance to the Court in developing criteria for such plans, and the Court shall permit and consider plans submitted by plaintiff-intervenors and allow plaintiff-intervenors to comment on plans submitted by others.

d. That the Court award plaintiff-intervenors their reasonable attorneys' fees and expenses, expert fees and costs, and other expenses incurred in this action.

e. That this Court order such other relief as is just and equitable in the circumstances.

Dated: August 26, 1991

POPHAM, HAIK, SCHNOBRICH & KAUFMAN, Ltd.

By /s/

Bruce D. Willis Reg. No. 117572
Mark B. Peterson Reg. No. 14440X
3300 Piper Jaffray Tower 333-4800
222 Ninth Street South
Minneapolis, Minnesota 55402

Attorneys for Plaintiff-Intervenors John Walker, Howard Miller, Don Sudor, Nkajlo Vangh.

ACKNOWLEDGMENT

The undersigned hereby acknowledges that costs, disbursements, and reasonable attorneys' and witness fees may be awarded pursuant to Minnesota Statutes, Section 549.21, subd. 2, to the party or parties against whom the allegations in this pleading are asserted.

/s/
Bruce D. Willis

SENATE REDISTRICTING MEETING
May 3, 1991
107 State Capitol
8:00 a.m.

Transcribed by Mary Hennessy
Committee Secretary

SENATOR MOE: On the agenda which you have before you we'll have some discussion about the population shifts, no. 1 and 2. We will not be discussing anything as relates to no. 3 and 4. We have some interesting maps put together as it relates to the minority population, the major concentrations of minority populations, which happen to be here in the Twin Cities, and we'll show you some maps as it relates to that. In terms of the population shifts do you want to start with Mr. Wattson, or Allen Hagen, which of you wants to proceed?

MR. WATTSON: Mr. Chairman, I can proceed. Basically to remind you of the information we went over in the Committee at some of the very first meetings in January and February. And if you recall, we had some maps of the state showing changes in population of municipalities with outlines of the house districts shown on the map and you'll recall that what those maps showed was that the population of Minnesota between 1980 and 1990 had declined in three of the four corners of the state with population

moving out of northeast Minnesota, northwestern Minnesota and southwestern Minnesota and moving into the Twin City area. And you'll recall we had a second map of the Twin City area that showed a population gain. Now those population gains were in the second- and third-tier suburbs. What was a surprise to me in those maps was that, not only did the central cities stay about the same or maybe lose some in population, but also the first-tier suburbs lost some population, especially in the suburbs north of Minneapolis in the Fridley, Spring Lake Park area. So, you knew, you all knew that based on the population counts that we had last fall and early this winter that there was going to be a shift of senate seats out of rural Minnesota and into the metropolitan suburbs. In August the Census Bureau had released some preliminary population counts. I think you will recall that in your Redistricting Handbooks we had copies of those preliminary population counts as well as maps from the State Demographer that showed this population shift I was just describing. In your books also was a table showing the impact of those shifts on the senate districts and it showed the amount of population, the number of seats, that was shifting from greater Minnesota to the metropolitan area was about 2 senate seats worth of population was shifting into the metro area and about one-half senate seat (about one house seat) was shifting from the central cities of Minneapolis and St. Paul to the suburbs. So, Minneapolis and St. Paul will lose one house seat and the suburbs will gain 2 senate seats from rural Minnesota and a half senate seat from the central cities, so a net gain of about three. So, you would expect to see in any plan that is drawn three pairs of incumbents in greater Minnesota, people who are put together in the same district because there isn't a seat there anymore, and you would expect to see in the metropolitan area suburbs, somewhere, three open seats. That's what we knew,

that's what you knew based on those preliminary population counts that came out in August and the information that was in your Redistricting Handbooks that you got in January. What has been happening since then is to find out what is happening, exactly where those lines are going to be drawn and who are going to be the three unlucky people who get paired with another incumbent and where will those three new opportunities in the suburbs be. For the suburban opportunities, I think you will recall, the most over-populated senate district in the State is Senator McGowan's district. And the City of Maple Grove was one of the fastest growing cities, so somewhere up in that area is likely to be an open seat, somewhere up in that northern suburban area. The second fastest-growing municipality I think was Egan, and the district down there I think is Senator Pariseau or Halberg. Senator Halberg's district is about the second fastest growing and somewhere down in the Egan area is likely to be a new open seat, under whatever kind of plan that you draw. Whoever draws the plan, that's going to happen. Somewhere else in the metro area, probably in the southwestern suburbs there would be an open seat. But just exactly where that would be, you couldn't tell based on those figures that you had back in January and that's what the work of the committee and the staff has been in the last few weeks to try and to figure that out. In one of our earlier meetings, Senator DeCramer raised the point about preserving the cores of prior districts and I said you can do that to some extent and keeping their old district to some extent, but on the other hand, the whole point of doing a new census and having to do redistricting is that things have changed, things have shifted, and as three districts get wiped out in greater Minnesota and three new ones get created in the metropolitan suburbs there are going to be some shifts in district numbers. Now, who is going to get new numbers

and when those numbers will change we don't know, but just at some point. But when we are done, there is going to be a change.

SEN. POGEMILLER: Mr. Chairman, one thing we need to keep in mind a little bit is that the points Mr. Wattson has made regarding population shifts are from kind of a Senate perspective using kind of a Senate geography. I think when you are talking double the number of districts as what the House is dealing with, there is a slightly different emphasis on that discussion, not major, but slightly different and one might view it slightly different. I think the Senate, since we would like to figure out a way to work things out with the House of Representatives, we want to be a little careful not to just get locked in on the Senate perspective.

SEN. MOE: So, instead of referring to it as one senate seat we'll say two house seats. I'm being ------. Senator Pogemiller, the fact of the matter remains, we know where the population is at. The population shifts are the same regardless, we know where the movement is that's fairly, not only the visuals that have been created through the various models, stands out in terms of the packet of information that was prepared for us from the beginning. It was very obvious.

SEN. DECRAMER: I gather from the comments made by Counsel Wattson that half of the inner city seat is going to then mean that some of the Minneapolis-St. Paul city seats will start taking in some of the first-ring suburbs, that is stating the obvious. I can imagine that expansion could occur for one or two house seats or one senate seat. One senate seat might be a mix of a city and a suburb or all of the seats that are on the outer side could move out partially into the suburbs. Is there a reason to do it one way or the

other? If we create one seat that is really a mixture, or is it important to have a mixture in all the seats that bump up against the first ring?

SEN. MOE: I think the first thing to remember is that at the present time I believe that Senator Marty's district in St. Paul, is part of the City of St. Paul and goes out into Roseville. That is an example. As it relates to the other question, the guiding principle there at least as the Senate is concerned would be that the resolutions that we have, and if I'm not mistaken, one of those principles, was to as much as possible to adhere to political subdivision lines as much as possible. In other words, let me just read it here: "a county, city, or town must not be divided into more than one district except as necessary to meet equal population requirements or to form districts that are composed of convenient, contiguous territory." As much as possible we want to adhere to those principles and I'd like to make sure, as you know those principles have been on the desk now for a couple of days in the form of the house concurrent resolution, and I believe they are going to take those up sometime today, try to get those processed. So, as much as possible we want to meet that requirement.

Any other questions of Mr. Wattson on those first points as relates to the population shifts and those impacts? If not, then who is going to do the presentation on the minority discussion, minority districts? Mr. Pogemiller, are you going to do the presentation?

SEN. POGEMILLER: Yes, Mr. Chairman. One of the first things that one has to pay attention to in drawing lines and according to our criteria and according to court decisions is to be sensitive to people-of-color populations–racial and language minorities. Some

of the initial work that we have been doing, and I believe the House of Representatives has been doing, is looking at where those populations are in our state, and in the urban areas there are basically three areas where there are concentrations, and if I could go to the map real quickly and look at that. I want to point out, we have a handout in front of us, that what we will look at is not districts, are not senate districts, they are footprints of where you can gather or put a line around the largest percentage population, and so it clearly will give an outline of where a potential senate district might be, but we do not want people to lock in on those particular lines because they are done at a precinct level which currently exists and there will be some carving around those districts to enhance the area.

SEN. MOE: Let me simply confirm that while Senator Pogemiller is coming up to the maps that, repeat, these are not districts but rather ideas for individuals and groups to react to, so that is the purpose of all of this.

SEN. POGEMILLER: Mr. Chairman, we are dealing with mostly Minneapolis and St. Paul. There are populations in greater Minnesota, but they don't reach the percentage levels in Minneapolis and St. Paul. These are broken down in groups.

This is the City of Minneapolis here roughly, the City of St. Paul, here, downtown. And, dealing first with the American Indian population, you can see where the concentrations are in Minneapolis. Just south of downtown, Powderhorn area, (inaudible portion, Pogemiller not at microphone but at maps), Hiawatha, people who live in Minneapolis, is fairly direct. This is a north Minneapolis area roughly, Lowry Avenue here, Broadway Avenue

here and Lyndale going through here. That clearly is an American Indian population. These demonstrate a lot of population numbers, so these are raw numbers as opposed to percentages.

The Hispanic population Minneapolis again is the downtown, the same census block in north Minneapolis and then a census block in south Minneapolis, I believe Lake Street is right here, I'm sorry precincts, not census blocks, right here is Lake Street. But, as most Minnesotans know there is a much larger Hispanic population in St. Paul. Here is the downtown area and this is West St. Paul. University Avenue is here.

The African American population, this is fairly dramatic, it gives an outline fairly quickly where our people-of-color populations are. Downtown St. Paul, University Avenue, the Hispanic populations are here, African American populations here are heavy. There is one are out here, Larpenteur. Then we come to Minneapolis. Here is the downtown, north Minneapolis, here is the city border, the Mississippi River goes right here. There is a clear population pocket in the Minneapolis area north of downtown and south Minneapolis, this general area of color near the Philips neighborhood. Further south this is 50th Avenue here, Nicollet Avenue here. I think members can see there are well defined areas in the cities.

(INAUDIBLE PORTION)

SEN. POGEMILLER: This again, is not to place districts, but to place a footprint when you combine all those people-of-color populations, this is what you come out with. Minneapolis border, St. Paul border and you can see three footprints, the St. Paul area,

the river here. This is not unsimilar to current Senate District 65, Senator Pappas's district, very close, there is a slight variation. This variation is a precinct that includes the Crocus Hill area.

SEN. MOE: That has to do with geography though. It's a large bluff, it is a precinct.

SEN. POGEMILLER: That is Crocus Hill, which is, which does not have a very large minority population.

(INAUDIBLE PORTION)

SEN POGEMILLER: Minneapolis, then, you have two clear footprints with the downtowns separating them. The one is the city border, railroad tracks, Hennepin Avenue, very similar to the current Senate District 57. The major difference is that there are two precincts right here that on several of the maps have a large percentage of people of color that are in the east side district. It is clear to me that has to move back. So that's a fairly well defined area.

South Minneapolis footprint looks not dis-similar to Senator Berglin's district. Again, Hennepin Ave, freeway, this line is a little west, narrow precincts here. One thing we want to point out with this footprint: it is possible based on the census tract, the precinct numbers, is not included in this footprint but could be and the Cedar Riverside district is not included but could be. So those are considerations. These footprints on the sheet at your desk give you these populations and deviations and they are pretty close. However, one would want to carve around here to enhance the percentage and take into account the particular neighborhoods, and

one would want to be sensitive how you draw lines through the Powderhorn neighborhood. What we are looking for Mr. Chairman, members of the Committee, is input from the community as to how they, with that as the basic footprint, what would the suggestions be on how to fine-tune? I do want to point out that we have, Representative Richard Jefferson and I have, met with persons of color and with representatives in the neighborhoods, Senator Cohen has met with groups in St. Paul, not only to discuss this and have had some input, that is what led us to draw this footprint just outside downtown, but we don't know that's the direction we ultimately want to go. There is some discussion that perhaps the population here is not as helpful. But those are the fine-tune things we need to discuss with neighborhoods, communities.

SEN. COHEN: Mr. Chairman, do you mind if I just show members of the Committee, I was hoping that Senator Pogemiller could show where the Asian population is in St. Paul, but apparently we can't get access to the map that has been prepared, so maybe I could just indicate where the concentrations are. (Inaudible portion as Senator Cohen moved away from the microphone to the maps.) As Senator Pogemiller mentioned, there is a dispersal of Asian population in St. Paul. When members do see the map, you will notice a concentration of the Asian community in this area, the McDonough housing project. It is something like 90% Asian, 2,000 people approximately. There is another concentration on the near east side, about 1,000 people, and in terms of drawing a footprint of a map, it was impossible, you also notice that there is a significant Asian population within this footprint and is somewhat dispersed. Southern part of footprint, members will notice, there is significant concentration in

St. Paul, here and here. In terms of trying to put them all in one footprint, geographically, it is impossible. I want to make that clear to members of the Committee.

SEN. POGEMILLER: Thank you Senator Cohen. Mr. Chairman, I want to direct members to the handout. The north Minneapolis footprint puts you in the range of 39% people-of-color population–39% of the total, 28% African American, 3% American Indian, 6% Asian and 2% Hispanic. The south Minneapolis footprint gets you roughly 46% people-of-color population. With again 28% African American, 9% American Indian, 6% Asian, 3% Hispanic. And then finally, the St. Paul footprint, roughly 42% people-of-color population, a little smaller African American population 18%, smaller American Indian 2%, but the Asian is 13%, as Senator Cohen has just pointed out, and the Hispanic is 9%. So Mr. Chairman, again, these are not districts, they are footprints. We need fine-tuning based on block-by-block data and input from the community, although there has been some input from the community, we just would like to broaden that input at this point.

SEN. MOE: Any questions of Senator Pogemiller?

SEN. COHEN: Mr. Chairman, let me just mention one other thing relative to the Asian community in St. Paul. Senator Pogemiller has concentrated on the attempt to concentrate those minorities, as would be appropriate under the case law. Again, if I could reference the problem with the Asian community in St. Paul, with the time we spent with them one concern they expressed, separate from the other minority groups was the concern that because of their dispersal, they were interested in concentration like the other

groups, but also had some concern to make sure at least in St. Paul, there be some attempt to take into account their dispersal throughout the city. So we spent some time discussing those concentrations. The point is a little vague, but I want to make clear to everybody that they had some separate concerns that Counsel and Mr. Hagen tried to take into account.

SEN. MOE: Again, what you've done with these models is to strengthen as much as possible the minority population's voting block by finding the concentration and drawing the line around it to maximize their voting potential. That's a quick summary.

SEN. COHEN: Yes, in so far as St. Paul is concerned, separate from those two particular concentrations that are close to the northern border of St. Paul, if we could see the Asian overlay along with the Black and Hispanic, you would notice that one footprint has close to a high percentage of the minority population of all three groups in St. Paul.

SEN. POGEMILLER: Mr. Chairman, just briefly, I want to mention Minneapolis. There has been some consultation with people of color. They have included local elected officials in Minneapolis, NAACP, persons who have been appointed to discuss redistricting for their organization and the Urban Coalition. But again, it's not a large, large group. Senator Cohen can mention who he has consulted with in St. Paul.

SEN. COHEN: Mr. Chairman, some of the same individuals and groups. Senator Pogemiller mentioned he has worked with Representative Jefferson. I've done some work with Representative Mariani, who represents the West Side house

district and is one of the Hispanic members of the House of Representatives. Councilman Bill Wilson, who is on the St. Paul City Council, spent quite a bit of time with us. We also had individuals as Senator Pogemiller did, from the NAACP. We had representatives of all the minority councils that worked with us. And then we had several members of the Asian community as well.

SEN. MOE: Any questions of either of them at this stage? If not, then we will again, hopefully, get some reaction back on this discussion we had this morning.

SEN. POGEMILLER: Mr. Chairman, one final point, as per your instructions as Chair. I think the intent is to work out from these footprints. This is of major importance that we do this right with community input and at least the message I have received from you is that this is of the highest priority and we want to work around these types of footprints to create our other senate districts.

SEN. MOE: That's correct.

Any other comments or questions? Senator Storm.

SEN. STORM: Mr. Chairman, just one quick comment that I think we need to address as we proceed from here. It is my understanding that in as much as Mr. McCarty's time has been directed by yourself or Mr. Pogemiller or whoever, on focusing on preparing to present these types of colored charts, he has not been able to spend the time, our station for example, simply to work out the bugs so that we can even start moving in this direction. It seems to me that if the process is going to be fair, and I suspect

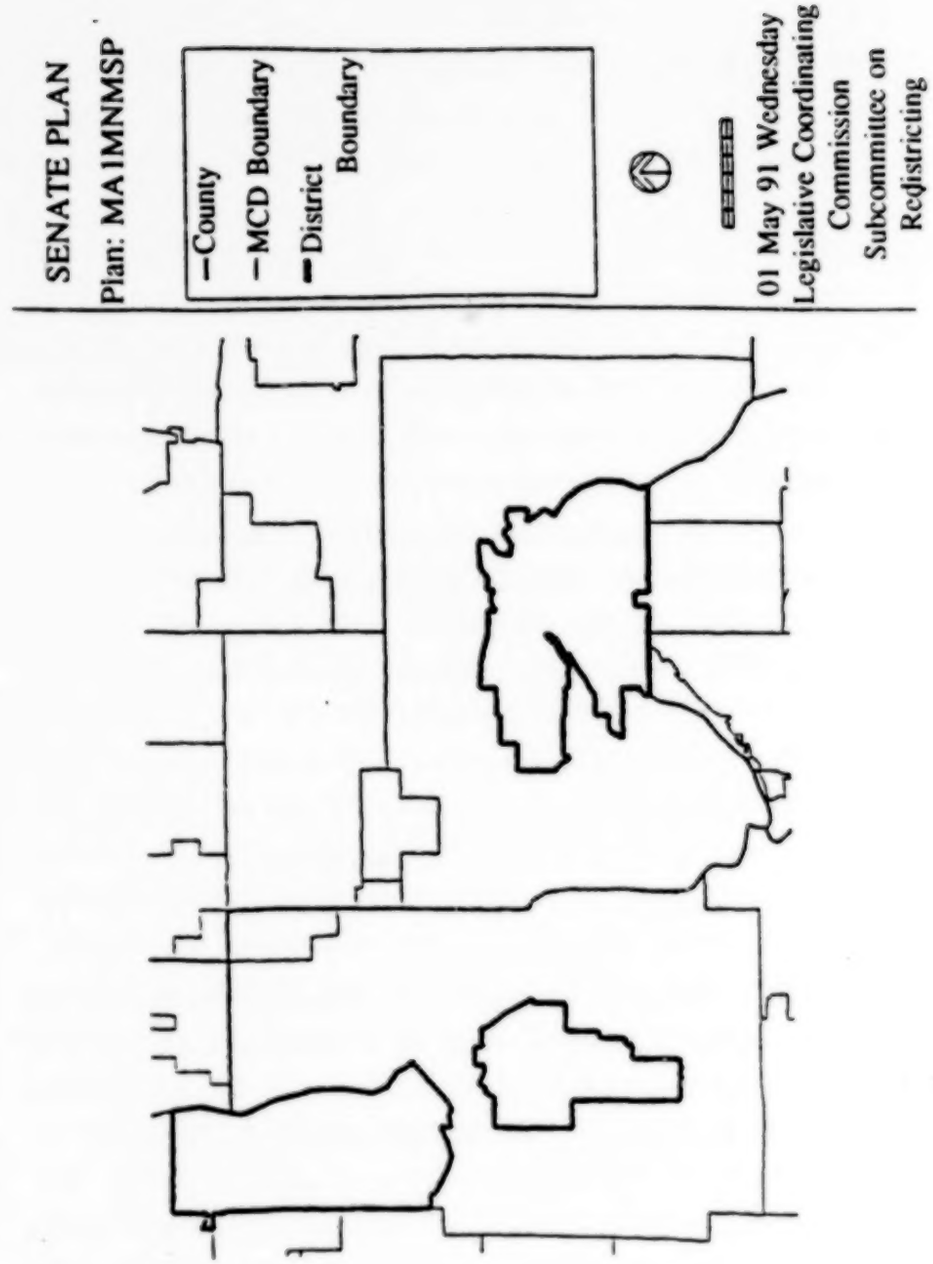
you would like it to be that way, we're going to have to get together, determine how his time is divided so that at least all of our stations can be operating at the same level, and I would not only ask but urge that either the subcommittee be directed to agree on a prioritizing of time or this Committee so we can at least all of us operating at the same level.

SEN. MOE: That's a good point, and let me just say that I know even without asking you that this is equally high a priority with the Republican Caucus as it is with the DFL Caucus. I think we instinctively know that that concentration of population deserves special attention as granted by the courts in previous rulings, so the work that he has done for these particular maps, or outlines if you will, is universal, is as valuable to your caucus as it is to ours as it is to the greater community, so I don't think that is not time that is granted to one child and not to the other. I think that is equal time.

SEN. STORM: Mr. Chairman, I am not questioning the value of the work. I'm simply pointing out that as that priority was determined by someone which our side had no input on, it has impeded us even getting to a starting level and I can sense that Mr. Hagen and your people are considerably beyond the level where we are. The reason for that is that Mr. McCarty cannot get over and help us work out those bugs.

SEN. MOE: No question about it, I'll try to be a bit more sensitive to that.

Any other questions or comments? If not, thank you, we stand adjourned.



May 15, 1991
318 State Capitol
5:00 p.m.

S.F. No. 1571
Public Testimony

Mr. Bill Davis, NAACP
Mr. Bill Wilson
Mr. Jim Mulder, Association of Minnesota Counties
Mr. Richard Tanner, Minnesota Chippewa Tribe
Mr. Todd Otis, State Democratic Farmer Labor Party
Mr. Bob Weinholzer, State Independent Republican Party

Transcribed by Mary Hennessy
Committee Secretary

(Explanation of S.F. No. 1571 not transcribed.)

SEN. MOE: A number of people have indicated an interest to say a few words and I'd like to ask those to testify at this time. I'll just go right down this list that I have. Mr. Bill Davis, representing the NAACP. Mr. Davis, welcome.

MR. DAVIS: Thank you Mr. Chairman. Members of the committee, ladies and gentlemen, my name is Bill Davis. I am the Chairman of the Political Action Committee for the Minnesota Dakota State Conference for the National Association for the Advancement of Colored People, also known as the NAACP. I also serve as the First Vice-President and Chair of the Political

Action Committee for the Greater Minneapolis branch of the NAACP and also serve as the chair of the statewide organization known as the Minnesota African American Political Caucus.

Mr. Chairman, I appreciate the opportunity to be here today, to speak to you on the issue before you, the redistricting proposal. I have been a party to numerous discussions regarding this with Senator Pogemiller. Several members from the community of color have been invited in from time to time to review the basic footprints of the general area that is being proposed. Let me back up and say that nationally the NAACP is very interested in redistricting. Statewide, nation-wide this has become one of our top priorities. We have established a redistricting committee, which I am chair of as well, and we have been asked to monitor redistricting activities throughout the State of Minnesota, as well as in our local area and to report back to the national office. It is our feeling that we are either locked in or locked out for the balance of this century, so we feel that redistricting is very very important to the community of color. As I mentioned, I have been afforded the opportunity along with other people of color to participate in this process and we have been extended an opportunity to sit down in front of the computer to do some carving out of districts to make sure we have a fair and as well as an opportunity to have representation. This is not an assurance by any stretch of the imagination but certainly to provide an opportunity for a person of color to be elected and particularly the three districts we spoke about earlier: Senate District (I'm only familiar with the old numbers) but Senate District 57, which is now 58; former Senate District 60, which is now 61; and 65, which is in St. Paul, which still remains Senate District 65. Those three areas as well as a couple of senate districts in northern

Minnesota have a significant population of color. Those issues are key to us because, as you know, the voters right act allows and encourages groups, particularly people of color, to come forth, particularly if they feel the plan excludes opportunity for running for public office. So we were very much concerned about this process. I think its important to point out that it's necessary, in fact imperative, that some action be taken very soon with respect to drawing these lines, so that the community of color can begin to organize in those respective communities, as opposed to waiting for a year or for a special session to take place. We think that the technology is there, as Sen. Pogemiller has already spoke to. This is not the 60's the 70's or the 80's when we did not have that type of technology that we currently have available to us in the 90's. I think with the advent of the computers and the programs it makes it much easier to draw a fair boundary for the various communities. So I would urge this committee to move forward with this process, continue to solicit input from other individuals who would like to step forward. But clearly, delaying this process will only hamper the opportunities for particularly communities of color who organize, which also may give rise to some further challenges if that is perceived to be the situation.

I think this plan sets the standards by which cities will begin to draw their boundaries. That is also critical and very important to the community of color that the lines for the cities be drawn as soon as possible as well. We have elections that will be coming up in '92 and '93 and we would like to have the opportunity and the luxury of identifying these individuals in these areas to represent us where there is a large concentration of people of color.

Mr.Chair, that concludes my remarks and I certainly will answer any questions people would have at this time.

SEN. MOE: Thank you Mr. Davis. Are there any questions of Mr. Davis at this time? Sen. Storm.

SEN. STORM: Mr. Chair, Mr. Davis, two questions. One, have you scrutinized any part of the plan other than the districts pertaining to communities of color?

MR. DAVIS: Mr. Chairman, principally when viewing the communities of color, the three district we talked about, certainly had an opportunity to look at how that affects the other districts adjacent to it but not much beyond that. That's where our principal focus and concentration has been. I should also add that this process, I had an opportunity to participate in 1980, and in comparison this is certainly a more fair and open process, afforded a number of people an opportunity to review the districts. In answer to your question, it was limited to the three specific districts with the exception of the other districts in close proximity to it.

SEN. STORM: Mr. Davis, I'm glad, as you are, that there has been some open discussion (inaudible portion). What's difficult for me is to place that in context of a total plan. I can appreciate that you feel portions of the plan are very acceptable and very appropriate. I can't accept that as an endorsement of a plan for the State, and I'm sure you can understand the need to scrutinize it on a much larger basis.

The second question, if we were looking at an ideal time frame and you're saying you too feel a sense of urgency, could you help us with some parameter? Is it imperative in your opinion that this be passed this week, or for communities of color, if it were to be passed August 1st, would that still be acceptable?

MR. DAVIS: Mr. Chair, Senator Storm, I think that the sooner the plan can be adopted and the lines can be identified, then we can move on to the next process, which will be ultimately any challenges that may occur. That's always going to add additional time to the process. If we do not ratify a plan until August, let's say, then we have a door, a window, which will give people an opportunity to challenge the plan, which then would extend it beyond that period of time. I would think what we are trying to do is get something out, something to the public, put some parameters down, allow people to react to it and move forward. I think this is the first step of a many many step process. I think it is a good step. I would encourage you to follow the suggestions of the Chair, when he suggested that we move forward, have additional hearings, let people react to it. This is not a new phenomena. People knew that redistricting was going to take place. This is not a new subject matter. I think that everyone in this room knew, had a rough idea where the lines were going to be drawn, if not the exact lines. I don't think this is new information that anyone is receiving today. In this particular format it may be new, but not the notion of redrawing the lines. So, I think the opportunity has been afforded people and those who were conscientious, eager, interested, made every effort to avail themselves of this information, and I think now is the time to act and move forward and then allow whatever challenges to come forth at that time.

SEN. STORM: Mr. Wattson, what is the mandated time frame? When must we have a plan prior to (Inaudible portion)?

MR. WATTSON: Mr. Chairman, Senator Storm, the constitution and the statutes don't lay down a firm date by which the Legislature has to act. In other states they do have constitutional and statutory deadlines. We don't. We have a practical deadline of March 24th or March 25th 1992. If the Legislature has not completed action by that time the courts would feel it incumbent upon them to impose a plan so that the redrawing of the municipal precincts, the city wards, the county commissioner districts could go forward in advance of the filings opening the first part of July.

Is there a deadline when a person could file a lawsuit? Not really. If the plan passed by the Legislature in the 1991 session, the Governor signs it, it could be subject to a court test immediately. The court has the summer and fall to examine it, scrutinize it, throw it out if it doesn't meet constitutional requirements, and the Legislature has the opportunity to come back and meet the court's concerns. If the Legislature doesn't act until February or March of 1992, then the court review has to occur at a time when there is no opportunity for the Legislature to come back and fix things. It is too late in the process. So those are the practical deadlines and practical considerations that we face.

SEN STORM: So that early completion, Mr. Chairman, does not necessarily preclude challenge at any point along the way.

MR. WATTSON: Mr. Chairman, Senator Storm, not at all.

SEN. COHEN: Mr. Chairman, Mr. Davis, I don't want to put words in your mouth, and maybe Councilman Wilson who is present might agree with this. When I worked with minority communities in St. Paul, I know one concern relative to the timetable was that everybody else waits for us. So in order to draw precincts within municipal lines and try to create some county board districts or city council wards that would reflect minority population, whatever, it was felt there was some urgency. I don't know if that is your sense as well.

MR. DAVIS: Mr. Chair, Senator Cohen, that is precisely what I was alluding to, was that the drawing of these lines then sets the tone and the standard for the drawing of the ward lines, the county lines and all of the other lines that precede that, so I think that therein lies a domino affect. So that once these lines are drawn, then the other jurisdictions can begin to draft lines, again giving the community of color an opportunity to organize and mobilize and have an opportunity, at least playing on a level playing field in terms of identifying candidates that can potentially serve those communities.

SEN. MOE: Any other questions of Mr. Davis? If not, thank you very much for appearing tonight.

Mr. Bill Wilson, St. Paul City Council, welcome.

MR. WILSON: Mr. Chairman and members of the committee it is my pleasure to address you this evening on this m ter of redistricting. It is certainly a very important undertaking on the part of the State – lays the foundation upon which all the elections in the State of Minnesota will be held. So, clear and decisive and

fair process going into redistricting is imperative. I, like Mr. Davis, have had the opportunity of working with Senator Pogemiller and Senator Cohen to have input into this process and we welcome that input. Seldom do citizens have the opportunity to have a hands-on experience to help shape the outcomes of these kinds of processes. Here in the State of Minnesota we are pleased to know we have this kind of open, inclusive process. It is important beyond that for the communities to know that this process is available. This again goes back to the fundamental question of inclusiveness and involvement of the people in our government. The cornerstone of that of course is in voting and the right to vote, as was the opportunity for you to vote to make a difference. I certainly as a person feel strongly about this. In my last election we won by 2 votes, and so we can appreciate the importance of each and every vote. My vote and the other individual's vote made a difference and so we take this very seriously. I appreciate the fact that this body takes it seriously. So, I'd like to encourage the committee would move forward with a plan. As Mr. Davis alluded to, it does lay the foundation for all the districting throughout the State, and if I am correct in this that the local jurisdictions cannot do districting until the State has completed its redistricting, so we anticipate the State's districting so we can in fact go forward. The people throughout the cities in St. Paul and Minneapolis and across the State are awaiting that opportunity. Again, I thank Mr. Chairman for the opportunity to testify. We were here on some late evenings, working, the citizens trying to have input and make a difference. We'd like to see the result of this go forward quickly.

SEN. MOE: Thank you. Are there any questions of President Wilson?

SEN. STORM: Mr. Chairman, Mr. Wilson, we appreciate you being here and appreciate also your support of the process as you have participated and given your insight. Have you had a chance to scrutinize the plan at all? Are you prepared to speak to what you feel is the value or propriety of the plan?

MR. WILSON: Of the plan in its totality?

SEN. STORM: Of the plan that Sen. Pogemiller just described and maps shown.

MR. WILSON: Only in very general terms. We were primarily focusing on districts, I was primarily focusing on districts, affecting the communities of color. We had some general experiences seeing the impact that had on other districts throughout the city and State, but fundamentally that was our experience.

SEN. MOE: Any other questions of President Wilson? Thank you very much.

Jim Mulder from the Association of Minnesota Counties.

MR. MULDER: Thank you Mr. Chairman, my name is Jim Mulder. I am the Executive Director of the Minnesota Association of Counties. We strongly support the Legislature in doing the redistricting and getting it done this session. It certainly will assist us and aid us in being able to do our work. We are very concerned about the timetable that is set forth and our ability to be able to do our job. So, we strongly support the process moving forward yet this session and hope it will be completed. We have

taken no stand on the merits of this, but certainly on the timing we certainly appreciate it.

SEN. MOE: Any questions of Mr. Mulder?

SEN. STORM: Mr. Chairman, Mr. Mulder, what are the time constraints that you and your people are under that would be impeded if we had a plan that was agreed upon, had good bipartisan support, had a lot of broader public inputs and have it completed by August 1st?

MR. MULDER: Mr. Chairman, Senator Storm, our preference is to have it done now. It wouldn't cause huge problems if it was August 1st, but I think the longer time frame that we have the better off that we are.

SEN. STORM: Mr. Chairman, Mr. Mulder, if we took until August 1st, then could we be assured of a plan that would have had scrutiny and would have been accepted as a fair plan by a broad group of people? Would you feel that would be a worthwhile venture?

MR. MULDER: Mr. Chairman, Senator Storm, I'm not in a position to make a judgment on that kind of a qualitative judgment. Whether its a better plan or not.

SEN. MOE: Are there any other questions of Mr. Mulder? If not, thank you very much.

Mr. Dick Tanner, did you indicate that you would like to make some comments? Welcome.

MR. RICHARD TANNER: My name is Richard Tanner. I work with the Minnesota Chippewa Tribe and looking at the map, it's very nice that in redistricting we are keeping the Reservation more or less intact within one senate district and will help. We have Senator Finn now who is out of LaPorte and may help him retain his seat in the respect that Leech Lake Reservation is within one senate district where before, it was in two. White Earth Reservation was in two senate districts before. Now it's in one senate district. Red Lake was kind of split in two senate districts. Now they are all essentially in two senate districts, which really does help a lot. It also helps in terms of having the house districts also within one district rather than being split up in two or three different districts. Speaking from experience, I think that it could help an Indian person if they decided to run for the House of Representatives, like I did in 1982. I lost by around 200 votes. But even the present, if I had that map now, if I had used that map in '82 I probably would have won, because that way, all the Reservation's villages are within one district. I think this would increase at least the chances of (inaudible portion). But it does open up in the future the opportunity for three Indian people to run in House seats and have a good chance of winning in the northern part of the State.

SEN MOE: Are there any questions of Mr. Richard Tanner?

SEN. STORM: Mr. Chairman, I am going to ask the same question of Mr. Tanner. I am as encouraged and excited as you are about the opportunities for Native Americans to have representation, but have you scrutinized the plans beyond those districts? Are you able to comment?

MR. TANNER: No, just like you, I haven't had an opportunity to look at the whole plan, just those districts which had large population of Indian people, including the urban areas. But outside of the Reservation areas and the urban areas I have not really looked at it.

SEN. MOE: Thank you very much Mr. Tanner, I appreciate your testimony.

Mr. Todd Otis.

MR. OTIS: Mr. Chair, Members of the Committee, thank you for the chance to testify. I'm Todd Otis, Chair of the DFL Party. I realize the enormity of the task in front of you and appreciate the fact that you are trying to pass a bill in time for the parties to get organized and avoid the chaos next spring that not having this resolved could bring about. We've been there before and I hope we can avoid that happening. I do come as a partisan and so I do look at a bill in terms of whether it is going to help increase DFL strength or reduce it. And there are problems within this proposal regarding DFL strength that make me not dance in the street about the proposal, with all due respect to the committee. You are cutting strength areas for the DFL for example on the Iron Range and in Minneapolis. You are opening up opportunities and a lot of them in areas where it has been traditionally hard for us to compete in, such as some of the suburban areas, and you pair more DFL members against each other than you do Republicans. And so as the DFL Chair, I speak only for myself as our Central Committee and our Executive Committee have not had an opportunity to discuss this, but I did feel it is important to be on the record. We have some excellent freshmen DFLers in the

House who are going to have to run against each other apparently. And I won't and can't go through the whole list but a number of match ups are occurring that are going to be painful. So, we appreciate though organizationally the prospect of getting the job done in time so we don't have two conventions and chaos next spring. With that I will conclude.

SEN. MOE: Any questions of Mr. Otis? Sen. Pogemiller.

SEN. POGEMILLER: Mr. Otis, do you oppose the plan?

MR. OTIS: Well, like I said our party has not had a chance to vote on it formally but those are my concerns.

SEN. POGEMILLER: Do you personally oppose the plan?

MR. OTIS: I'm not prepared, unfortunately. I don't have the burden of voting on it. I'm not here to do anything except express my concerns about it.

SEN. POGEMILLER: Mr. Otis, have you seen the plan?

MR. OTIS: Mr. Chairman, Senator Pogemiller, I've had the summary of the plan be explained to me so I understand what it does to DFL incumbents and Republican incumbents.

SEN. POGEMILLER: So, Mr. Chairman, it is safe to say that you are expressing some concerns based on a summary of the plan that was presented to you.

MR. OTIS: Yes, and I think the summary is enough for me to get a sense as to whether it makes it better or worse for Democrats and from what I have heard we are losing support in the Iron Range and the core city of Minneapolis, which are traditional DFL strong holds, and that concerns me, that is what I am here to express.

SEN. KNAAK: Mr. Chairman, you would agree then that whatever plan was adopted it would reflect the one vote one person philosophy that the Iron Range would lose some voting strength because of what is going on.

MR. OTIS: I'm just expressing my concern for the effect of the plan. I'm sure you can re-draw these lines that will minimize that, and all I'm saying is the effect of the, of this plan that I described today, indicates that we will be losing DFLers in strong areas.

SEN. KNAAK: Mr. Chairman, so it is clear in my own mind, what you are reacting to is the effect of the summary that we heard about today.

MR. OTIS: That is exactly right.

SEN. BENSON: Mr. Chairman, Mr. Chairman, why hasn't your Central Committee voted on this?

MR. OTIS: We aren't meeting until next September. We meet twice or three times a year.

SEN. BENSON: Would they like to have an opportunity to react to this?

MR. OTIS: I think I will let the Legislature make that decision.

SEN. MOE: Any other questions of Mr. Otis? Thank you very much Mr. Otis.

SEN MOE: Mr. Bob Weinholzer, you have equal time here.

MR. WEINHOLZER: Thank you Mr. Chairman, Bob Weinholzer, Chairman of the Independent Republicans. I have to admit that I just saw this material at 5:00 P.M. today for the first time, so it's very hard for me to give an opinion on it. It may very well be the fairest plan that has come out of the Legislature in the last 30 years. Not that that would take a whole lot, but it might very well be.

I was very interested to see all the cooperation of the different groups and the people testifying for this tonight. It seems like everyone was informed about it and cooperated on it except the I.R.'s. I did notice that. One of the statements that was brought up was the fact that we do have until March 1992 for the Legislature to actually redistrict. Now this will be one of the more important pieces of legislation to come out of this session, if it does, based on the fact that besides bonding there is no other legislation that will have an enforcement on following legislatures for the next 10 years. This I think makes it very important that this be well thought out, well planned, well discussed plan for redistricting that is fair to all parties concerned. I do have to say probably the hardest thing about this to try to determine if this is fair or not is the lack of maps. Because I have taken the descriptions here and I know one thing, I will be in a new district and so far I have read six of them and I still have not found where

I am going to be. And without a map I think it becomes extremely difficult to try to get a real feeling how fair these districts would be. So again, this may be a very, very good plan, it may be excellent, but I do think that we need not to rush this recklessly through and to take some time for full consideration and the opportunity for people throughout the entire State to come in and testify, since it does have an effect on laying the rules for the next 10 years.

SEN. MOE: Thank you. Any questions of Mr. Weinholzer?

MR. WEINHOLZER: Thank you.

SEN. MOE: Thank you. Is there anyone else who would care to make some comments? O.K.

SEN. POGEMILLER: Mr. Chairman, Senator Benson had asked earlier regarding the average. There was a typo on the deviation sheet passed out. I think the corrected version has been passed out. There were two districts that were flip flopped, district numbers, so this is the corrected version. I don't have the average, but I believe that the largest positive deviation is 1.57, the largest negative deviation is 1.85, and the range is 3.42. And I believe, and maybe Mr. Wattson can help me, but I believe the courts have basically said that as long as you stay within a range of 10 you are doing good work, or you are doing acceptable work.

MR. WATTSON: Mr. Chairman, Sen. Pogemiller. What the courts have said is that if the overall range of a legislative plan is less than 10% the plan will not be found to be prima facie invalid on population grounds. It could be that a plan that had a less than

10% overall range was invalid because it discriminated against minorities for example, but it would not be subject to attack simply on failure to meet equal population requirements. So the maximum level for the court is 10% and this plan has an overall range of 3.42%, with the largest positive deviation being 1.57% and the largest negative being 1.85%. Each is under the 2% you established for yourself in the concurrent resolution. 1.57 and 1.85.

SEN. KNAAK: There is in passing before I forget a typo on page 36, line 21.

SEN. POGEMILLER: Mr. Chairman.

SEN. MOE: Excuse me, did you want a response to that?

SEN. KNAAK: The author can offer an amendment, I can.

SEN. MOE: I think there are a half a dozen or more. Maybe that would be appropriate for him to go through other typos or technicals.

SEN. POGEMILLER: Yes, I believe I would offer an amendment.

MR. WATTSON: Mr. Chairman, members of the committee. The ones that have been called to my attention so far. The first is on page 11, line 18, or 17 and 18, where it says "that portion of Lac Que Parlo County consisting of" blank, just delete all of that, there is no Lac Que Parlo County....

(Remainder of meeting not transcribed.)

UNITED STATES DISTRICT COURT

DISTRICT OF MINNESOTA

FOURTH DIVISION

Jeanette Booker, et al,	)	
	)	
Plaintiffs	)	
vs.		MEMORANDUM ORDER
	)	
Special School District No. 1,	)	4-71 Civil 382
Minneapolis, Minnesota, et al,	)	
	)	
Defendants	)	
	)	

****

Defendant's have moved for an order dissolving the permanent injunction and dismissing the action. Plaintiff's have moved for supplementary relief, specifically for an order requiring defendant's to submit to the Court a revised integration plan on or before June 15, 1983 that eliminates the present exchange program between North and Edison High Schools.

The Court heard testimony on May 17, 1983. The Court has considered the testimony of the witnesses, the exhibits and affidavits, the arguments of counsel and the post hearing briefs.

This Court's Order of June 17, 1981 noted that defendant's were engaged in long range planning for the five year period 1982-1986 which would probably result in substantial changes in the organization of the school district. Defendant's completed the long range plan and submitted a separate desegregation/integration plan

for the same period. The Order of June 17, 1981 provided

> "that said desegregation/integration plan will be designed to assure that, for the school years 1982-86, no school will have a minority student population that exceeds the District-wide average of minority students for grade levels contained in that school by more than fifteen percent (15%) and that the student population of every school in the District will be significantly involved in the District's desegregation/integration effort."

As noted in the Order of June 22, 1982 plaintiff's had four (4) main objections to the desegregation/integration plan. The first concerned the North-Edison programmatic desegregation program. A second objection was directed to the closing of Central High School. Plaintiff's now seriously challenge the North-Edison exchange and renew their suggestion that reconsideration be given to the Central closing.

The 15% requirement presents a problem for North (and this has been true for most of the course of this litigation despite changes in percentages) because of housing patterns in the North area.

The exchange program provides for North and Edison students in the 9th, 10th and 11th grades to attend the other school for one trimester in each year. The student may decide to remain at the other school for the entire year.

The Order of June 22, 1982 expressed concern about the exchange program at North-Edison and on July 22, 1982 in denying plaintiff's motion for reconsideration the Court stated that it would order modification if the plan proved unacceptable.

This case has been pending since 1971. After a two week trial in the Spring of 1972 the Court on May 24, 1972 issued its initial Order granting declaratory and injunctive relief. Through

the years there have been additional hearings, the consideration of motions and the issuance of Orders modifying or supplementing the earlier Orders.

The Order of June 17, 1981 stated that the action would be dismissed on June 15, 1982 in the absence of objections to the desegregation/integration plan for the 1982-1986 school years. The Order of June 22, 1982 stated that the Court would view a motion to dismiss unfavorably but that it had no intention to retain jurisdiction indefinitely. The Order stated further that if there were no objections which support retention of jurisdiction that the Court would dismiss the lawsuit on June 15, 1983.

There was testimony at the hearing on May 17 that there are different teaching methods at the 2 schools, that the speed of progress varies, that there are delays at the beginning of a trimester and that time is lost. There was testimony that computerization in the future may help solve problems, that a remedial program can be worked out and that the exchange will work better next year (1983-1984). There was testimony that the exchange produced more absenteeism (North to Edison) that students felt more lonely, that students preferred to be with the same students or class for the whole year and that the exchange interfered with interest in extra-curricular activity at the home school.

There was testimony from one white Edison student that she had decided to transfer permanently to North. There may be others. Witnesses stated that the exchange will lead to integration, that a new curriculum mandate would be of help, that remedial programs will help, that permission to select the trimester could be worked out administratively and that if there were no exchange that North would be 55% to 57% minority. Superintendent Green stated that more orientation will help and that this will take place in the fall of 1983.

Other witnesses stated that the exchange is a fine program and the program has great benefits but some individual students may be hurt.

As reflected in the June 22, 1982 Order the District hopes that in time the mandatory programmatic desegregation may become unnecessary because students will voluntarily cross the attendance districts to take advantage of the educational programs at either of the schools.

As to a possible remedy two witnesses stated that the exchange be eliminated as to the 9th grade. This would leave only the 10th and 11th grades as part of the exchange. There was general agreement that Edison should not be closed and that North should not be limited to 9th and 10th grades and Edison to 11th and 12th grades. One or more witnesses stated that the boundary lines should be changed. The Court is not clear as to whether the suggested boundary change follows the earlier 1982 proposal. That proposal extended the attendance district for Edison from east to west across the full width of the city, excluded students north of Saint Anthony Boulevard who would have normally attended Edison and included portions of the Franklin Avenue Indian Community area in south Minneapolis, the predominantly black Glenwood Project area and the Bryn Mawr community on the western border of the city. This proposal generated substantial opposition from all of the affected areas, some of which may be characterized as "political". Superintendent Green testified that he much prefers the exchange program to other alternatives.

The Minnesota State Department of Education has established a policy to ensure the elimination of racial segregation and to provide equal educational opportunity. In his affidavit of April 29, 1983 the Commissioner stated that the Department of Education is willing and able to assume the duty of monitoring the

further implementation of the District's desegregation/integration plan. In a February 9, 1983 letter to Superintendent Geeen, Commissioner Feda stated that he and his staff had reviewed the five year plan and found that it satisfies the applicable Rule and that the implementation of the plan would be monitored in accordance with the Rules of the State Department of Education.

The Minneapolis Citizens Committee on Public Education has established a task force to review the progress of the 5 year plan. The Court assumes that this includes the desegregation/ integration part of the plan.

Plaintiff's suggest that the exchange program is unprecedented and has not been tried anywhere else in the country. The Hale-Field pairing in 1970 preceded the commencement of this lawsuit and was an early experiment in attempting integration/segregation. That pairing, however, involved an exchange for the entire school year. There was considerable initial opposition to that pairing. There was later general agreement that the pairing had been successful and that the integration/desegregation process had been furthered.

The June 22, 1982 Memorandum reviewed in great detail the cost of renovating and rehabilitating Central High School and the relationship of these costs to other high schools. The May 24, 1983 affidavit of Marvin L. Tenhoff, Director of Facilities and Plant Planning, states in detail cost estimates and additional factors which would have to be considered in reopening Central. The District was initially correct in its assessment of which schools in the long range program required closing. The Court reaffirms its earlier decision on the closing of Central.

In its latest decision on March 31, 1983 the Eighth Circuit Court of Appeals emphasized a School Board's commitment to ensuring that equal educational opportunity is provided to all

students within a school system. Some 7 or 8 years ago, 2 and possibly 3 members of the School Board opposed integration/ segregation and any remedy that the Court might impose. The Court is now convinced that the majority, if not all, of the School Board and the Superintendent and his staff will support the constitutional rights of the students and will respect the rights of all of our citizens, including students, to the equal protection of the law as required by the Constitution.

The Court believes and finds that the District should have the opportunity for autotomous compliance with constitutional standards, that the State Department of Education should and will monitor the implementation of the long range plan which includes integration/desegregation and that the North-Edison exchange program satisfies constitutional standards.

The complaint in this case was filed in 1971 and a number of trials, hearings and other proceedings have continued since 1972. The Court appreciates the dedication of plaintiff's and their counsel to the integration/desegregation process and to the maintenance and preservation of constitutional rights.

IT IS ORDERED:

1. That the motion of defendant's to dissolve the permanent injunction and to dismiss the action be granted.
2. That the motion of plaintiff's for supplementary relief requiring defendant's to submit to the Court a revised integration plan by June 15, 1983 that eliminates the North-Edison exchange program be denied.

June 8, 1983

/s/
United States Senior District Judge

Supreme Court, U.S.
FILED
JUN 30 1992
OFFICE OF THE CLERK

(10)

No. 91-1420

In The
Supreme Court of the United States
October Term, 1991

JOAN GROWE, SECRETARY OF STATE OF THE STATE OF MINNESOTA, ET AL.,
Appellants,

vs.

JAMES EMISON, ET AL.,
Appellees.

On Appeal from the United States District Court for the District of Minnesota

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STATEMENT OF THE CASE

This appeal involves federalism issues arising from the conflict between a federal court action for legislative and congressional redistricting in Minnesota, which involved claims of malapportionment and Voting Rights Act violations, and a competing state court action, which involved only claims of malapportionment.

The underlying federal action is a consolidation of two separate cases involving numerous parties.[1] A three-judge panel of the United States District Court was formed on April 8, 1991, pursuant to 28 U.S.C. § 2284(a) (1988), in response to the first action brought March 18, 1991, by plaintiffs below, appellees here, James Emison, Judy Fairbanks, Marie Iverson, Ken Dean, Steve Castillo, Lew Freeman, and Yao Lo, individually and on behalf of all citizens and voters of the state of Minnesota similarly situated ("the Emison appellees"). The Emison appellees' complaint alleged that existing state legislative and congressional districts violated the Fourteenth Amendment of the United States Constitution and that the existing scheme of legislative districts violated Voting Rights Act § 2, 42 U.S.C. § 1973 (1988). The Emison appellees' complaint requested the adoption of new state legislative and congressional districts that meet constitutional and other legal requirements. The complaint also requested the

---

[1]Appellants are the Minnesota Secretary of State, named defendant below, and several intervening parties below, including the majority caucuses of the Minnesota legislature, the Hennepin County Auditor, and several private citizens.

Appellees comprise two groups of private citizens and Appellee Mark Lundgren, Carver County Auditor, named in the consolidated federal action as a defendant individually and on behalf of all county auditors in the state of Minnesota.

adoption of new state legislative and congressional districts that, inter alia, maximize minority voting strength, in the event that the Minnesota legislature failed to do so. See generally Emison v. Growe, 4-91-202, Amended Complaint (D. Minn., March 29, 1991) ("Emison Complaint"), A-73-91[2].

The second federal action was filed on August 9, 1991, by plaintiffs below, appellees here, Duane Benson, Terry Dempsey, Dolores Hettig, Richard Harmon, David E. Peterson, E.M. Patricia Pidcock, and Frank Ringsmuth ("the Benson appellees").[3] The Benson appellees sought review of a legislative redistricting plan passed by the legislature on virtually a party-line vote at the end of the legislative session in May 1991. That plan was vetoed by the Governor but was codified as Minnesota Laws 1991, Chapter 246, as a result of litigation that determined the Governor's veto to be invalid on procedural grounds. The Benson appellees sought to have Chapter 246 declared unconstitutional and argued that it could not be considered as "state policy" by the federal court. The Benson appellees also sought appropriate ancillary relief, including

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[2]References to the Appendices and Record in this action are denoted as follows:

Appendix to Jurisdictional Statement	A-#
Appellees' Supplemental Appendix	SA-#
Joint Appendix	JA-#
Appendix to Brief of Appellants	ABA-#
Appendix to Brief of Appellees ("Emison-Benson Appendix")	EBA-#
Record (Docket Number of Document in Federal District Court's File)	R-#

[3]The Emison and Benson appellees are citizens from various geographical areas of Minnesota, and include Caucasian, Native American, Asian-Pacific, African-American, and Hispanic voters.

an expedited issuance of a constitutionally acceptable plan. See generally Benson v. Growe, 4-91-603, First Amended Complaint (D. Minn., Aug. 9, 1991) ("Benson Complaint"), SA-63. The Benson appellees' action was consolidated with the Emison appellees' action.

Appellants have accused variously the federal court and appellees of acting under "pretexts." See Brief of Appellants at 29; Appellants' Response to Appellees' Motion to Dismiss at 12 n.12. The only pretexts involved here were those under which the competing state court action was structured and those under which appellants Minnesota Secretary of State and Hennepin County Auditor, present only as election officials, assumed strictly partisan roles in their participation in both the state and federal actions.

The state court redistricting action was commenced on January 24, 1991, when the 1991 session of the Minnesota legislature was less than three weeks old and before the census data necessary for redistricting were available. See generally Cotlow v. Growe, C8-91-985, Complaint (Minn.D.Ct., Jan. 24, 1991), A-174. It was manifest that the action was premature and that no case or controversy existed when the case was filed. The original parties to that action were a group of private citizens as plaintiffs and the Minnesota Secretary of State and Hennepin County Auditor as defendants. The federal court subsequently found that all of these parties represented or were aligned with the interests of the same political party. See Emison v. Growe, 782 F. Supp. 427, 430 n.9 (D. Minn. 1992).

The wholly non-adversarial nature of the state redistricting action is demonstrated by a written stipulation entered into by the original parties on February 25, 1991, by which the parties stipulated that a case or controversy existed, that the state court had jurisdiction, that the plaintiffs had standing, and that the

existing districts were unconstitutional. The parties in fact stipulated to substantive resolution of all legal claims short of final relief. See Cotlow v. Growe, MX 91-001562, Stipulation (Minn. D. Ct., Feb. 25, 1991), A-192-195. In entering into the stipulation, the parties were well aware of the continuing nature of the 1982 federal court redistricting orders in LaComb v. Growe, 541 F. Supp. 145 (1982), and LaComb v. Growe, 541 F. Supp. 160 (1982), since the Minnesota Secretary of State and the Hennepin County Auditor were both defendants in the 1982 federal actions and two of the three named LaComb plaintiffs were plaintiffs in the 1991 state court action, represented by the same counsel who had represented them in the 1982 federal actions.

As further evidence of the non-adversarial nature of the original parties to the state action, the Court should note that they in fact agreed also on final relief, uniformly supporting the same redistricting plans and uniformly taking the same position on every motion in both the state and federal actions.

A state court redistricting panel was constituted on June 4, 1991, approximately two months after the federal panel was formed. See A-196-197. The original parties to the state action allowed intervention without objection by the majority caucuses of the Minnesota legislature, which represented the same political interests as all other parties to the action. See Emison, 782 F. Supp. at 430 n.9. However, plaintiffs in the state action continued to oppose intervention by parties representing other political interests until the initial pre-trial conference before the state court on July 26, 1991. See Cotlow v. Growe, MX 91-001562, Pretrial Order No. 1 (Minn. Spec. Redis. Panel, July 29, 1991), A-198-201.

The state court proceeding included none of the plaintiffs present in the federal action. Although the federal court did, as noted above, recognize that common political interests were

represented in the two proceedings, the Benson appellees were neither involved in the state action nor represented by counsel who appeared in those proceedings.

The federal action also presented legal claims not pled in the state action. The state court pleadings contained no Voting Rights Act claim, and plaintiff-intervenors in that case consistently argued against the state court's jurisdiction to consider such claims. See Cotlow v. Growe, C8-91-985, Memorandum of Plaintiff-Intervenors Regarding Exclusive Federal Jurisdiction Over Voting Rights Act Claims (Minn. Spec. Redis. Panel, Oct. 7, 1991), SA-107. In addition, the pleadings in the state court did not challenge the constitutionality of Chapter 246.

Following the initial pretrial conference before the three-judge federal court on July 22, 1991, appellant legislature specifically moved the federal court to defer, first, to a scheduled session of the state legislature in January 1992, and, second, to the state court proceedings. On August 21, 1991, the federal court issued a unanimous Memorandum Opinion and Order concluding that applicable law required both the state and federal courts to defer to and provide the legislature with an adequate opportunity to effect redistricting in its scheduled January 1992 session. See Emison v. Growe, 4-91-202, Memorandum Opinion and Order (D. Minn., Aug. 21, 1991) (hereinafter "August 21 Order"), A-106.[4]

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[4]At the time of the motions, the state legislature was scheduled to reconvene in January 1992, specifically to address redistricting. In fact, appellant legislature specifically asked the federal court to defer to the legislature, and represented that it would pass, and the Governor would sign or his veto would be overridden, valid plans for both legislative and congressional redistricting. See Emison, 782 F. Supp. at 431-32; August 21 Order, A-109. Yet, one week later, at a hearing before the state panel on August 29, 1991, a "majority of the parties" to the state action, which included the legislature, "requested that the panel accelerate the date for completion of the legislative redistricting process . . . ." See Cotlow v.

In doing so, however, the federal court stated that it would retain jurisdiction both to address any subsequent redistricting plan in light of the voting rights claims before it and to avoid the delay that would occur from the likely appeal of any state court action following the January 1992 legislative session.[5] See id., A-112-118. The federal court stated that it would appoint special masters to assist in developing contingent plans of redistricting in the event that the legislative process failed to produce valid plans by January 20, 1992. See id., A-117. It thereby denied appellant legislature's motion to abstain. In light of the court's determination regarding deference to legislative process, Emison appellees' motion to stay the state court proceeding was also denied. Id.

Chapter 246, the plan challenged by the Benson appellees, was found to be unconstitutional by the state court sua sponte on October 1, 1991. See Cotlow v. Growe, C8-91-985, Pretrial Order No. 4 (Minn. Spec. Redis. Panel, Oct. 1, 1991), A-218-220, A-225. The state court held that Chapter 246 was unconstitutional under both the state and federal constitutions because of numerous defects, including noncontiguous districts and violations of equal representation principles of the Fourteenth Amendment. See id., A-219-220. Nevertheless, without waiting for the legislature to

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Growe, C8-91-985, Pretrial Order No. 3 (Minn. Spec. Redis. Panel, Sept. 13, 1991), A-211.

[5]The federal court properly recognized that the state court would also have to defer to the legislative process given the requirements of Scott v. Germano, 381 U.S. 407 (1965). See August 21 Order, A-115. Any appeal of a state court decision issued after the legislature met in its 1992 session would necessarily progress first through the Minnesota state appellate process and only then to this Court. See August 21 Order, A-112, A-116. The federal court specifically noted the effect of the resulting appellate delay as grounds for asserting continued jurisdiction. See id.

reconvene in January 1992, the state court on December 9, 1991, issued a legislative redistricting plan. See Cotlow v. Growe, C8-91-985, Findings of Fact, Conclusions of Law and Order (hereinafter "State Court Legislative Plan") (Minn. Spec. Redis. Panel, Dec. 9, 1991), A-249. That plan essentially adopted amendments to Chapter 246 that appellant legislature proposed to enact in January 1992. Those amendments were passed by the legislature but were vetoed by the Governor on January 9, 1992. See Emison, 782 F. Supp. at 433-34.

The federal court similarly recognized the unconstitutionality of Chapter 246, citing its "numerous infirmities, including excessive population disparities and noncontiguous districts." Id. at 442. The federal court, because of the extent of constitutional defects in Chapter 246 and that chapter's perpetuation of Voting Rights Act violations, disregarded Chapter 246 in redrawing legislative districts. See id. at 442; see also Emison v. Growe, 4-91-202, Order Denying Stay (D. Minn., March 9, 1992) (hereinafter "Order Denying Stay"), SA-58. The federal court also drew new congressional district lines. See Emison, 782 F. Supp. at 446-49.

On March 2, 1992, plaintiff-intervenors in the state action brought a Motion to Dismiss or, in the Alternative, for Summary Judgment Regarding Congressional Plans, arguing that the federal court's congressional plan precluded any further action by the state court. See SA-115. A hearing on plaintiff-intervenors' motion was scheduled for March 23, 1992. See Cotlow v. Growe, MX91-001562, Affidavit (Minn. Spec. Redis. Panel, April 17, 1992), EBA-1-3. On or about March 18, 1992, at the initiative of the state court, plaintiff-intervenors agreed to an indefinite postponement of that hearing pending further action by this Court. See id. On April 15, 1992, without rescheduling a hearing on

plaintiff-intervenors' pending motion, the state court issued a congressional redistricting plan "to allow a complete record on review." Cotlow v. Growe, C8-91-985, Final Order (Minn. Spec. Redis. Panel, Apr. 15, 1992) (hereinafter "Final Order"), ABA-4. Plaintiff-intervenors moved for withdrawal of that order and for a hearing on their pending motion. See Cotlow v. Growe, C8-91-985, Plaintiff-Intervenors' Motion for Withdrawal of Final Order and Granting of the Relief Requested in Plaintiff-Intervenors' Motion Dated March 2, 1992, (Minn. Spec. Redis. Panel, Apr. 17, 1992), EBA-4. That motion was denied. See Cotlow v. Growe, MX 91-001562; C8-91-985, Final Procedural Order (Minn. Spec. Redis. Panel, Apr. 30, 1992), ABA-20.

ARGUMENT

I. THE FEDERAL COURT PROPERLY EXERCISED JURISDICTION.

A. The Federal Court Complied with Scott v. Germano Deference Requirements, While the State Court Did Not.

In Scott v. Germano, 381 U.S. 407, 409-10 (1965), this Court held that federal courts should retain jurisdiction over redistricting cases and should exercise that jurisdiction to enter appropriate orders, including redistricting plans, should state agencies fail to redistrict in a valid and timely manner. Even appellants concede that federal courts should proceed to resolve redistricting claims when state agencies fail to meet their redistricting responsibilities. See Brief of Appellants at 22.

The federal court below adhered to this principle. In its initial substantive order, the federal court unanimously mandated deference to the legislative process in accord with both Germano,

381 U.S. at 409-10, and White v. Weiser, 412 U.S. 783, 794-95 (1973). See August 21 Order, A-115. The federal court stated that governing law requires "[b]oth state and federal courts to defer to the legislature to draw a valid redistricting plan unless the legislature fails to act in a timely fashion."[6] Id.; see also Order Denying Stay, SA-60. As directed by Germano, the federal court unanimously refused to abstain; instead, it retained jurisdiction and proceeded to prepare contingent redistricting plans to be issued and made effective only upon the state's failure to enact valid and timely redistricting plans. See August 21 Order, A-116-117.

The federal court issued its plans only after the legislative process failed to produce redistricting plans.[7] The federal court

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[6]Despite this admonition, and in contravention of this Court's directed deference to the legislative process, the state court proceeded to develop and publish its legislative redistricting plan prior to the legislature's opportunity to act in January 1992. See State Court Legislative Plan, A-249. Cf. Weiser, 412 U.S. at 794-95; Sixty-Seventh Minnesota State Senate v. Beens, 406 U.S. 187, 196-97 (1972)(in reapportionment case, Court considered only "state policy" reached through legislative process); Smiley v. Holm, 285 U.S. 355, 373 (1932). Appellants' brief is silent as to the state court's preemptive action and its failure to defer to the legislative process. Cf. Brief of Appellants at 17-18.

The federal court recognized that the state court's issuance of a legislative redistricting plan was advisory, premature, and a clear interference with the legislative process, and the federal court therefore stayed the state court proceedings, pending action through the legislative process. See Order of Stay, A-150-154. This Court dissolved the stay on January 10, 1992, by which time the legislative process had failed to enact any plan. See Cotlow v. Emison, 112 S. Ct. 855 (1992); see also Emison v. Growe, 782 F. Supp. 427, 434 n.26 (D. Minn. 1992).

[7]In January 1992, the state legislature passed Senate File 1596, relating to legislative redistricting, and Senate File 1597, a congressional redistricting plan. See Emison, 782 F. Supp. at 433-34. Both bills were vetoed. See id. at 434. This Court has held that in Minnesota both the legislature and the Governor are integral parts of the legislative process. See Smiley v. Holm, 285 U.S. 355, 373 (1932).

issued its legislative redistricting plan only after it had also reviewed the state court's prematurely-issued legislative redistricting plan.[8]

The federal court found that the state court's plan perpetuated Voting Rights Act violations and failed to meet constitutionally-driven equal representation standards for court-ordered redistricting plans. See Emison, 782 F. Supp. at 434-46. The federal court further noted the numerous infirmities in and the unconstitutionality of Chapter 246, upon which the state plan was based, and it refused to defer for that reason and because the only proposed corrections had been expressly rejected by the executive. See id. at 442, 446. Cf. Sixty-Seventh Minnesota State Senate v. Beens, 406 U.S. 187, 197 (1972) (In reapportionment action, a vetoed reapportionment plan was not state policy.); see also Weiser, 412 U.S. at 797 (". . . the District Court should defer to state policy in fashioning relief only where that policy is consistent with constitutional norms and is not itself vulnerable to legal challenge.").

The federal court was justified in acting. It faced time deadlines imposed by approaching elections, as well as a state court legislative plan that violated federal law and state and federal constitutional standards, was based on an unconstitutional statute, and was virtually identical to a plan vetoed by the Governor. See Emison, 782 F. Supp. at 431-46. The federal court's actions were entirely consistent with this Court's directive in Germano. See Germano, 381 U.S. at 409-10.

In challenging the federal court's actions, appellants falsely

[8]No congressional redistricting plan was prepared by the state court until almost two months after promulgation of the federal court's congressional redistricting plan.

paint a picture of federal court abuse of jurisdiction at the expense of state proceedings. See Brief of Appellants at 21. Their argument ignores the inherent limits in Germano and the federal court's adherence to those limits here. Affirmance of the federal court's decision will not invite re-litigation of issues timely and validly decided by state courts, nor would litigants be "fully able" to raise partisan interests in separate federal proceedings if not satisfied with state decisions. Cf. Germano, 381 U.S. at 409-10 (federal court's jurisdiction may be exercised only where the state fails to adopt valid and timely redistricting plans).

Affirmance in this case merely would recognize that federal courts should adopt redistricting plans where states have failed in that task. This result is fully in accord with Germano.[9]

B. Germano, not Younger v. Harris, Establishes the Appropriate Abstention Standard for Redistricting Cases.

Appellants and amici curiae Frost, et al. (hereinafter "the Frost amici") suggest that this case is appropriate for federal court abstention under Younger v. Harris, 401 U.S. 37 (1971). This argument ignores this Court's clear direction that federal courts retain jurisdiction in redistricting cases, as well as its repeated direction that federal courts exercise that jurisdiction, particularly in the protection of fundamental civil rights such as voting. See Germano, 381 U.S. at 409-10; Harman v. Forssenius, 380 U.S.

[9]It is also in accord with Members of the California Democratic Congressional Delegation v. Eu, Court File No. C-91-3383 (N.D. Cal., March 3, 1992), in which the federal court refused to abstain from proceeding until litigation long pending before the California Supreme Court was resolved. See id., slip op. at 8. The federal court examined the state supreme court's decision and only thereafter declined to act, concluding that the state court had produced a valid and timely plan. See id., slip op. at 7-9, 19-20.

528, 537 (1965); see also Colorado River Water Conserv. Dist. v. United States, 424 U.S. 800, 817 (1976).

This Court in Germano has already addressed the propriety of federal court jurisdiction in redistricting cases and the degree to which federal courts should abstain, if at all. See Germano, 381 U.S. at 409-10. As discussed above, the Court in Germano expressly directed that a federal court should retain jurisdiction, in the face of competing state proceedings, and should take appropriate action to ensure that redistricting is completed in a valid and timely manner. See id.

Appellants' argument also disregards limits to Younger abstention. In Younger, the Court recognized that abstention would be inappropriate in certain situations, such as where the challenged statute "flagrantly and patently" violates constitutional prohibitions. See Younger, 401 U.S. at 53-54. In Colorado River, 424 U.S. at 816, this Court addressed these limits further, stating that Younger abstention would not be appropriate in instances involving a "patently invalid state statute." That is precisely the case here.

Chapter 246, at issue in legislative redistricting, was declared wholly unconstitutional by the state court due to "numerous infirmities" and "numerous defects" that violated both the state and federal constitutions. See Pretrial Order No. 4, A-220, A-225. The federal court more clearly outlined the scope of the defects in the statute:

> In Emison, this court is facing population deviations in Chapter 246 as great as 43.45% above the ideal and 45.10% below the ideal, with the total range of these deviations resting at 88.55% -- this is 22.11 times the overall range which the Minnesota Legislature has imposed on itself.

* * *

> [T]his court is being asked to adopt approximately 160 corrections to Chapter 246 which allegedly affect over thirty state senate and house districts in approximately one third of the state's eighty-seven counties.

Emison, 782 F. Supp. at 446 n.50. Chapter 246 is exactly the type of "patently invalid state statute" to which Younger abstention does not apply. See Colorado River, 424 U.S. at 816.

Appellants and the Frost amici raise Younger abstention in a cursory manner. They define Younger abstention with reference to protection of "vital" or "important" state interests. Brief of Appellants at 15 n.9; Frost Amici Brief at 12. However, neither brief attempts to identify those interests. Cf. id.

Younger abstention was raised for the first time in this proceeding in appellants' and the Frost amici's merits briefs. The only abstention previously sought by appellants, even as late as their jurisdictional statement, was the Germano requirement of conditional deference. That case, however, expressly recognizes a federal court's right to redistrict in particular circumstances. See Germano, 381 U.S. at 409-10.

A suggestion that complete abstention under Younger is merited here is in direct contravention to the holding in Germano. It is also contrary to "the virtually unflagging obligation of the federal courts to exercise the jurisdiction given them." Colorado River, 424 U.S. at 817; see also 28 U.S.C. §§ 1331 (federal question jurisdiction), 1343 (jurisdiction over civil actions on civil rights and elective franchise), 2284(a) (appointment of three-judge courts for redistricting disputes); 42 U.S.C. § 1973 (jurisdiction under Voting Rights Act).

Abstention is a narrow exception to a federal court's duty to adjudicate a controversy properly before it, particularly where

voting rights issues are presented. In Harman v. Forssenius, 380 U.S. 528, 537 (1965), a voting rights case, this Court found no abuse of discretion in the district court's refusal to abstain in favor of a state court:

> [T]he district court was thus faced with a claimed impairment of the fundamental civil rights of a broad class of citizens. . . . Given the importance and immediacy of the problem and the delay inherent in referring questions of state law to state tribunals, it is evident that the district court did not abuse its discretion in refusing to abstain . . . .

The Court also stated that "recognition of the role of state courts as final expositors of state law implies no disregard for the primacy of the federal judiciary in deciding questions of federal law." Id. (quoting England v. Louisiana State Bd. of Med. Examiners, 375 U.S. 411, 415-16 (1964)).

The federal complaints here raised claims not before the state court. The Emison complaint alleged violations of the Voting Rights Act and sought affirmative relief. See Emison Complaint, A-82-88. The Benson complaint was brought by individuals who were not parties to the state action and who raised constitutional challenges to Chapter 246 and requested appropriate relief. See Benson Complaint, SA-63. The federal court repeatedly stated that it could not abstain because of these issues unique to the federal action. See August 21 Order, A-112-113; Order of Stay, A-144-145; Emison, 782 F. Supp. at 432.

The federal court appropriately resolved all outstanding issues by adjudicating claims that two separate groups of plaintiffs had chosen to bring before it. Once convened, the jurisdiction of a three-judge court under 28 U.S.C. § 2284(a) "extends to every question involved, whether of state or federal law, and enables the court to rest its judgment on the decisions of such of the questions

as in its opinion effectively dispose of the case." Sterling v. Constantin, 287 U.S. 378, 393-94 (1932), cited in Emison, 782 F. Supp. at 430-31.

Appellants have identified no unique facts, issues, or interests supporting abstention. The mere pendency of a state proceeding is not a reason for a federal court to abstain. See McClellan v. Carland, 217 U.S. 268, 281-82 (1910). The federal court was the only court presented with Voting Rights Act issues and constitutional challenges to Chapter 246. The federal court properly resolved all issues before it, and, in so doing, it resolved all issues that were before the state court.

II. THE FEDERAL COURT PROPERLY ISSUED A LEGISLATIVE REDISTRICTING PLAN.

A. The Federal Court Properly Adjudicated the Voting Rights Act Claims Before It, and Its Order Was Supported by the Evidence.

Section 2(a) of the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973, prohibits imposition of any voting standard, practice, or procedure that results in a denial or abridgement of the voting rights of minority citizens. Section 2 applies whenever "the totality of the circumstances" reveals that "the political processes leading to nomination or election . . . are not equally open to participation of members of a [protected class] . . . in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." 42 U.S.C. § 1973(b) (1988) (emphasis added). This Court has held that this Act is a "broadly worded statute" and is to be interpreted with "the broadest possible scope." Chisom v. Roemer, 111 S.Ct. 2354, 2368 (1991).

1. The Federal Court Had an Affirmative Obligation to Address All Claims Before It, Including the Voting Rights Act Claims of the Emison Plaintiffs.

The Emison complaint specifically alleged that legislative district boundaries on the Red Lake and White Earth Reservations and in Minneapolis violated § 2(a) of the Voting Rights Act, 42 U.S.C. § 1973(a)(1988). No such allegations were raised by any party in the state court proceeding. The federal court therefore was obligated to retain jurisdiction and determine, inter alia, "whether voting rights violations have been proven in this case." Emison, 782 F. Supp. at 435. The federal court also was required to ensure that any plan, whether enacted through the legislative process or issued by a court, provided adequate relief if Voting Rights Act violations were found. See August 21 Order, A-116.

Appellants' contention that the Emison appellees' claims concerning Voting Rights Act violations did not extend to or were otherwise mooted by Chapter 246 is unsupportable. The pleadings before the federal court alleged that the legislative districts instituted by order of a three-judge federal court panel in LaComb v. Growe, 541 F.Supp. 160 (D. Minn. 1982), violated the Voting Rights Act. The court's order in LaComb expressly prohibited "holding or conducting any future elections for the Minnesota Legislature under any apportionment plan except that which we adopt today or a constitutional plan adopted after this date by the State of Minnesota." Id. at 166-167 (emphasis added). Chapter 246 was passed late in the 1991 legislative session in an effort to replace the legislative districts ordered in LaComb in 1982. However, the state court panel subsequently determined that Chapter 246 was unconstitutional:

> We conclude that numerous infirmities, including noncontiguous districts, invalidate Minnesota's present districting law, Minnesota Laws, 1991, Chapter 246, under the Minnesota Constitution, Article IV, sections 2 and 3 . . . .
>
> We also conclude that Minnesota Laws 1991, Chapter 246 is invalid under the United States Constitution . . . .

Pretrial Order No. 4, A-219-220.[10] Chapter 246 was not a constitutional plan of redistricting, and it therefore did not supersede the plan of legislative districts issued in LaComb v. Growe.[11] The legislative districts ordered by the federal court in 1982 remained in effect. The Emison appellees' Voting Rights Act challenges to those existing districts remained viable.

Appellants' alternative contention that the state court properly resolved any Voting Rights Act claims is not only meritless, but also would create dangerous precedent if accepted. The state court did not have before it by pleading any allegation concerning the Voting Rights Act. Plaintiff-intervenors in the state action so advised the court and consistently objected to the state court's authority and effort sua sponte to adjudicate the Voting Rights Act issue. See Memorandum of Plaintiff-Intervenors Regarding Exclusive Federal Jurisdiction Over Voting Rights Act Claims, SA-107. The state court acknowledged these challenges to "the applicability and justiciability of Voting Rights [Act] claims in this proceeding," Cotlow v. Growe, C8-91-985, Pretrial Order No. 5 (Minn. Spec. Redis. Panel, Nov. 8, 1991), A-228, but

[10]The federal court made a similar determination. See Emison, 782 F. Supp. at 442 (" . . . Chapter 246 was a hastily drafted bill containing numerous errors. These constitutional defects were acknowledged by all of the parties. We agree that Chapter 246 is unconstitutional.").

[11]The determination that Chapter 246 was patently unconstitutional necessarily invalidated that bill's repealer of the 1983 legislative enactment that codified the LaComb districts.

proceeded to declare that "Minnesota Laws 1991, Chapter 246, complies with the Federal Voting Rights Act," without further comment. State Court Legislative Plan, A-259.

Further, the state court's conclusion of Voting Rights Act compliance applied only to Chapter 246, an act the same court had already determined to be unconstitutional. See Pretrial Order No. 4, A-219-220.

The state court's decision was a patent attempt to pre-empt subsequent federal court action and was an improper effort to bind non-parties who had properly asserted Voting Rights Act claims in the separate federal proceeding. To allow Voting Rights Act § 2 to be used in this fashion by a state court undermines the Act and jeopardizes the rights that it is intended to protect. This is particularly true where, as in the present case, the federal court subsequently found that the state court's own plan violated the Voting Rights Act.

2. The Federal Court Properly Found Voting Rights Act Violations.

The Voting Rights Act applies a "totality of the circumstances" test to alleged violations of § 2. 42 U.S.C. § 1973(b). As the Court emphasized in Thornburg v. Gingles, 478 U.S. 30, 44 (1986)(citing S. Rep. No. 417, 97th Cong. 2d Sess. 28-29 (1982), reprinted in 1982 U.S. Code Cong. & Admin. News (hereinafter "1982 U.S.C.C.A.N.") 177, 206-207), a court must assess the impact of the contested structure or practice "on the basis of objective factors" to determine the ultimate question:

> . . . whether "as a result of the challenged practice or structure plaintiffs do not have an equal opportunity to participate in the political processes and to elect candidates of their choice."

The Court has recently rejected the use of judicially created

limitations to restrict coverage under § 2. In Chisom v. Roemer, 111 S. Ct. 2354, 2368 (1991), the Court stated:

> [T]he standard that should be applied in litigation under § 2 is not at issue here. Even if serious problems lie ahead in applying the totality of the circumstances described in § 2(b), that task, difficult as it may prove to be, cannot justify a judicially created limitation on the coverage of the broadly worded statute, as enacted and amended by Congress.

a. The Gingles Preconditions Do Not Apply in Challenges Involving Single Member Districts.

Appellants and amicus Department of Justice (hereinafter "amicus DOJ") contend that the three preconditions in Gingles, 478 U.S. 30, a case involving multimember districts, constitute a threshold requirement for a finding of a Voting Rights Act violation in this case, which involves single-member districts.[12] This simplistic contention is an effort to impose further judicially created limitations of the type expressly rejected by the Court in Chisom.

Gingles involved the challenge of a state legislative redistricting plan that used multimember districts, and it is limited to that circumstance. Id. at 48 (" . . . unless there is a conjunction of the following [preconditions] the use of multimember districts

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[12]Like at-large elections, multimember districts simply raise the number of votes necessary to achieve election, making it increasingly difficult for anyone other than a member of the majority group to obtain any representation in the legislative body. This case addresses a quite different device: the drawing of district boundaries in such a way as to make it difficult or impossible for minorities to obtain seats in a legislature organized on a single-member district basis.

generally will not impede the ability of minority voters to elect representatives of their choice"). The Court stated:

> [W]e have no occasion to consider whether the standards we apply [to multimember district vote dilution claims] . . . are fully pertinent to other sorts of vote dilution claims, such as a claim alleging that the splitting of a large and geographically cohesive minority between two or more multimember or single member districts resulted in the dilution of the minority vote.

Id. at 47 n.12 (emphasis added). The Emison complaint alleges that splitting of large and geographically cohesive minorities between two or more single-member districts resulted in the dilution of the minority vote.

The rationale for applying preconditions to multimember district challenges does not apply to single-member district challenges. The purpose of Voting Rights Act § 2 is to address electoral procedures that result in minority voters having "less opportunity than other members of the electorate to participate in the political process." 42 U.S.C. § 1973(b). One such device is multimember districts, which the Court in Gingles acknowledged inherently tend to "operate to minimize or cancel out the voting strength of racial [minorities in] the voting population." Gingles, 478 U.S. at 47 & n.13 (citing Burns v. Richardson, 384 U.S. 73, 88 (1966)); see also id. at 87 (O'Connor, J., concurring). However, the Court also observed that multimember districts were not "per se violative of minority voters' rights." Id. at 48. Therefore, to avoid inevitable legal challenges any time that minorities are not elected in direct proportion to their population, the Court established threshold preconditions for any challenge to multimember forms of districting by requiring that a minority group first establish that it would otherwise be guaranteed the

opportunity to control at least one single-member district.

Second, there is a difference between the diluting effects that can be found in multimember districts and those that may be found in redistricting a legislature with single-member districts. As a three-judge panel in Armour v. State of Ohio, 775 F. Supp. 1044, 1052 (N.D. Ohio 1991), recently observed, single-member districts possess their "own unique opportunities for abuse, of which racial gerrymandering is a prime example." To apply the three preconditions in Gingles to single-member districts, one of which conditions is that a minority group "is sufficiently large and geographically compact to constitute a majority in a single-member district," would invite racial gerrymandering and create a device to limit the fair opportunity for participation in the electoral process by establishing a barrier for potential legal challenges.

By way of example, a single-member district with a potential single minority group population of 49% of the total voting population in the district could be divided into two districts, reducing the minority population in each district to 24.5%. A court reviewing the "totality of the circumstances" could find that such districting had the effect -- intentional or otherwise -- of reducing the opportunity of minority members "to participate in the political process and to elect representatives of their choice," in violation of 42 U.S.C. § 1973(b). Such a result could also be the product of an intentional but difficult to prove gerrymander. However, under the Gingles preconditions as advocated by appellants and amicus DOJ, members of the affected minority community would be unable to meet even the first threshold requirement of Gingles -- that they constitute "a majority in a single-member district." Gingles, 478 U.S. at 50. Such an absurd result ignores the intent and purpose of the Voting Rights Act. The district court in Armour thus concluded:

> We cannot agree with the defendants that a government may with impunity divide a politically cohesive, geographically compact minority population between two single-member districts in which the minority vote will be consistently minimized by white bloc voting merely because the minority population does not exceed a single district's population divided by two.

Armour, 775 F. Supp. at 1052.

The Court in Chisom made clear its intent to give full effect to the broad language and purpose of the Voting Rights Act, ensuring that members of minority groups have no less opportunity to participate in the political process and to elect representatives. The federal court here, looking at the totality of the circumstances, achieved that purpose.

b. The Evidence Supported a Finding of Voting Rights Act Violations.

Whether redistricting schemes or electoral structures ultimately have a diluting effect is a fact question subject to the clearly erroneous standard of Rule 52(a). See Rogers v. Lodge, 458 U.S. 613, 622-627 (1982); City of Rome v. United States, 446 U.S. 156, 183 (1980); White v. Regester, 412 U.S. 755, 765-770 (1973). With respect to the Voting Rights Act § 2 claims in this matter, appellants and amicus DOJ have made no showing that the federal court's finding of a Voting Right Act violation, based on the "totality of circumstances," was clearly in error.

In reviewing the evidence in this case, the federal court was guided both by the directives of this Court and legislative history. First, this Court has directed that the Voting Rights Act "should be interpreted in a manner that provides 'the broadest possible scope' in combatting racial discrimination." Chisom v. Roemer, 111 S. Ct. at 2368 (1991) (quoting Allen v. State Board

of Elections, 393 U.S. 544, 567 (1969)).

Second, the Senate Judiciary Committee Report that accompanied the 1982 bill amending § 2 identified specific factors to be considered in determining the totality of circumstances that could show a violation of the Voting Rights Act within the meaning of § 2. See 1982 U.S.C.C.A.N. at 206-07; Emison, 782 F. Supp. at 436-37 (quoting factors). These factors need not all be proven by plaintiffs, nor must even a majority of the factors "point one way or the other." 1982 U.S.C.C.A.N. at 207. "The failure . . . to establish any particular factor is not rebuttal evidence of non-dilution." Id. at 207 n.118.

Third, when considering the totality of the circumstances, a court is to make its determination "upon a searching practical evaluation of the past and present reality." Gingles, 478 U.S. at 79 (citation omitted). Such a determination is peculiarly dependent upon the facts of each case, and requires "an intensely local appraisal of the design and impact" of the contested electoral mechanism. Id. (citing Rogers, 458 U.S. at 621-622). This Court stated in White v. Regester, 412 U.S. 755, 769-770 (1973):

> We are not inclined to overturn these findings, representing as they do a blend of history and an intensely local appraisal of the design and impact of the . . . [multimember] district in the light of past and present reality, political and otherwise.

The federal court in this case, "composed of local judges who are well acquainted with the political realities of the state," Gingles, 478 U.S. at 80, analyzed and applied the Senate Report's factors to available evidence and found that legislative districts in the City of Minneapolis violated the Voting Rights Act. See Emison, 782 F. Supp. at 436-41. The federal court further determined that neither Chapter 246 nor the state court's similar plan corrected those violations. Id. at 440.

Most indicative of § 2 violations was the lack of minority representation in the Minnesota legislature. See id. at 437-38. The only factor expressly mentioned in § 2 is "the extent to which members of a protected class have been elected to office in the State or political subdivision.. . ." 42 U.S.C. § 1973(b) (1988). The state senate currently has no minority members from Minneapolis, nor has a minority senator been elected from Minneapolis in recent history. See Emison, 782 F. Supp. at 437-38. There is only one state representative from Minneapolis who is a member of a minority group, and Minneapolis has elected just two minority house members in the past decade. See id. at 437. Both were from the same district. See id.

The 1982 legislative districts, which did not include a "super-majority" minority senate district, resulted in election of no minority senators. See id. at 437-38. These results are entitled to great weight as evidence of Voting Rights Act violations, because 1982 amendments to the Act sought to "make clear that certain practices or procedures that result in denial or abridgement of the right to vote are forbidden even though the absence of proof of discriminatory intent protects them from constitutional challenge." See id. at 438 (emphasis in original).

Minneapolis minority legislative representation is significantly below the proportion of minorities in the city's population. See id. Proportional representation would entitle minorities to four seats of the eighteen available in Minneapolis districts. See id. Nevertheless, minorities have held just one seat in the past decade. See id. While proportional representation is not an entitlement under the Voting Rights Act, lack of proportional representation of minorities is one of the "circumstances" suggested in the Senate Report as indicating a § 2 violation. See 1982 U.S.C.C.A.N. at 206-07.

The federal court also observed that the only minority representative now in the state house of representatives was elected from a super-majority minority district. See Emison, 782 F. Supp. at 438. This suggests the representational effect that can be achieved by concentrating minorities in super-majority minority districts to allow the effective assertion of minority voting rights through enhancement of bloc voting. Cf. 1982 U.S.C.C.A.N. at 206-07.

A "super-majority" concentration can be achieved in a Minneapolis senate district. See Emison, 782 F. Supp. at 438. This senate district, number 59 in the federal court's plan, concentrates minorities in proportions similar to those previously found to be effective in achieving minority representation in the state legislature.[13] See id. The super-majority minority district seeks to correct the historical lack of minority representation.

In finding Voting Rights Act violations, the federal court also relied upon the extent to which minorities in Minnesota bore the effects of discrimination in education, employment, or health. See id. The federal court noted recent judicial findings that the Minneapolis public school district had "acted intentionally to maintain or increase racial segregation in the schools." Id. (quoting Booker v. Special Sch. Dist. No. 1, Minneapolis, 451 F.

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[13]Appellants have suggested that such a district is opposed by "leaders of the Black community in Minneapolis . . . ." Jurisdictional Statement at 19 n.12; see also Brief of Appellants at 37 n.28. But see SA-231.

Appellants also have suggested that the federal court failed to draw a true super-majority minority district because of voting age considerations. See Jurisdictional Statement at 16-17 & n.9; A-381, A-383. Appellants fail to note that redistricting is based upon total population; that the data upon which they rely are now almost two years old; and that the plan presumably will be in effect for ten years. The federal court's plan in any event creates a district with a minority population fully ten percent higher than any minority district drawn by the state court. See A-383.

Supp. 659, 660 (D. Minn. 1978)). Minneapolis school district policies had been found to be "especially offensive due to defendant's knowledge of the extensive nature of housing segregation within its bounds." Id. (quoting Booker v. Special School Dist. No. 1, Minneapolis, 351 F. Supp. 799, 809 (D. Minn. 1972))(emphasis added).[14]

The federal court found that the legislative districts created by Chapter 246 and by the state court plan reflected "voting practices or procedures that may enhance the opportunity for discrimination . . .," another of the Senate Report's factors. See id. at 438-39; Order Denying Stay, SA-61 ("[T]he plan proposed by [appellant legislature] and adopted by the state court is not only gerrymandered to protect incumbents in Minneapolis, foretelling the continued dilution of minority voting rights, but it also contains unwarranted population deviations and lacks compactness

[14] Appellants challenge the federal court's reference to a newspaper publication article reflecting continued performance gaps between minorities and whites in the Minneapolis school district. See Brief of Appellants at 39. It is clear from even a cursory reading of the federal court's decision that the court's primary reliance was on express judicial findings made as recently as 1978. See Emison, 782 F. Supp. at 438.

Appellants additionally criticize the federal court's reference to Minnesota's history of official discrimination, see Brief of Appellants at 39, but they fail to note that the court expressly did not rely on that history. See Emison, 782 F. Supp. at 438-39 n.35. It is clear both from the federal court's language in footnote 35 and its ultimate conclusions that the court instead relied on other sufficient evidence of Voting Rights Act violations. See id. at 438-39 n.35, 439-40.

Appellants finally suggest that a subsequent order in the Booker case somehow eradicated the "effects of discrimination in education" that are to be considered in the Senate Report's list of factors. See Brief of Appellants at 39 n.31. However, the order cited by appellants itself makes clear that there is ongoing monitoring of the implementation of long-range plans for integration/desegregation in the Minneapolis public school districts. See ABA-66.

statewide." (emphasis added)).

The federal court found that Chapter 246 was designed "to protect incumbents in the City's overwhelmingly white legislative delegation." Emison, 782 F. Supp. at 438-39. Of eighteen Minneapolis legislators, Chapter 246 paired no incumbent senators; house members were paired only once. See id. at 439. The federal court stated that incumbent pairing should have been inevitable in light of the population decline in Minneapolis. See id. at 439 & n.37. The court concluded that this avoidance of incumbent pairing was apparently done in "priority over the protection of minority interests in the plan proposed by [appellant legislature]." Id. at 439.

Incumbent protection by Chapter 246 and the state court's plan, see id.; Order Denying Stay, SA-61, was clearly not "state policy," see Emison, 782 F. Supp. at 439 n.37. To the contrary, state policy found in a joint legislative resolution calls for avoidance of dilution of minority voting strength and for increases in the probability of election of minority legislators. See id.

Incumbent protection is a voting practice and procedure that enhances the opportunity for discrimination against minorities. See id. at 438-39. Accordingly, the practice of incumbent protection at the expense of minority representation is a factor weighing in the "totality of circumstances" under § 2, and it is an additional circumstance that demonstrates a Voting Rights Act violation. Cf. 1982 U.S.C.C.A.N. at 206.

The facts demonstrated minority vote dilution in Minneapolis, in violation of Voting Rights Act § 2. See Emison, 782 F. Supp. at 439. The federal court stated:

> The all-white senate delegation from Minneapolis, the significant proportional underrepresentation of minorities from the overall legislative delegation from Minneapolis, the apparent attempt to protect

> incumbencies at the expense of minority concentrations, the fragmentation of a geographically cohesive minority population into different senate districts, the educational disadvantage of Minneapolis minorities, the segregation in the Minneapolis school districts, and the judicial experience showing the need for super-majority minority districts, when considered all together, are sufficient to create a prima facie case in the totality of the circumstances which exist here.

Id. at 439-40.

In remedying the violations, the federal court rejected appellant legislature's proposed plan, which essentially was Chapter 246 as it was proposed to be amended by Senate File 1596. See id. at 440. The federal court found that this plan and the state court's plan, adopted from appellant legislature's proposal, perpetuated Voting Rights Act violations. See id. The federal court therefore issued a plan that remedied Voting Rights Act violations by creating a super-majority minority senate district. See id. at 440-41. The federal court's action was fully supported by the facts, and its plan was necessary to effectuate the purposes of the Act.

Appellants and amicus have failed to demonstrate that the federal court's finding of minority voting rights violation in single-member districts in the City of Minneapolis in this instance was clearly in error.

B. The Federal Court Based Its Legislative Redistricting Plan Upon All Valid, Discernible State Policy.

All parties to this appeal agree that a court must be guided by discernible state policy in redistricting. See White v. Weiser,

412 U.S. 783, 794-95, 797 (1973); Brief of Appellants at 43. The federal court specifically acknowledged this responsibility. See Emison, 782 F. Supp. at 442, 446. Therefore, it is essential to review the state policy considered by the federal court in determining whether that court was clearly erroneous in its application of the "state policy" standard established by this Court.

1. The Federal Court Properly Based Its Legislative Plan on State Policy.

In drawing its legislative plan, the federal court considered criteria in a joint legislative resolution, which appellant legislature has acknowledged reflects state policy. See id. at 442-43 & n.44. The resolution established 2%, plus or minus, as the maximum permissible population deviation from the ideal for legislative districts. See id. at 444. The federal court's house plan has a total population deviation of 1.40% (from the maximum negative deviation to the maximum positive deviation), and its senate plan has a total deviation of 1.20%. See id. at 444.

By minimizing population deviations, the federal court's legislative plan better met the policy requirement of Minnesota Constitution, article IV, § 2, which provides that "representation in both houses shall be apportioned equally throughout the different sections of the state in proportion to the population thereof." The federal court's plan also met this Court's requirement that court-ordered reapportionment plans be held to stricter standards and "strive to achieve 'the goal of population equality with little more than de minimis variation.'" Emison, 782 F. Supp. at 443 (quoting Chapman v. Meier, 420 U.S. 1, 27 (1975)).[15]

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[15]The state court's failure to adopt a plan in conformity with the requirement of de minimis population deviations in court-adopted plans constitutes an additional ground for upholding the federal court's action. The state court

The federal court's legislative plan also achieves state policy goals of preserving minority voting strength and increasing the probability of minority representation, while the appellant legislature's proposal, as adopted by the state court, does not. Cf. id. at 440, 443 (stating state policy). The federal court's plan creates a super-majority minority senate district in Minneapolis with a total minority concentration of 60% and an African-American concentration of 43%, percentages proven adequate to elect minority members to the legislature from Minneapolis. See id. at 438, 448. Neither the legislative plan proposed by appellant legislature nor the state court's plan contained such a district.

Additionally, the federal court's legislative plan also establishes compact districts, meeting another requirement of state policy. See id. at 442, 444-45. In accord with this state policy, a recent scholarly article suggests that a requirement of electoral district compactness must be imposed as a procedural safeguard

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recognized as one of its criteria for legislative redistricting the goal of de minimis population deviations in court-ordered plans. See Cotlow v. Growe, MX 91-001562, Pretrial Order No. 2 (Minn. Spec. Redis. Panel, Aug. 16, 1991), A-205; see also Chapman, 420 U.S. at 21-27. However, the federal court's plan "has significantly lower population deviations from the ideal than the plan[] proposed by the defendant-intervenors," which was virtually identical to the legislative plan ordered by the state court. See Emison, 782 F. Supp. at 443. As the federal court concluded:

> The defendant-intervenors' plan fails to give each citizen of Minnesota an equally effective voice in the election of members to the legislature.
>
> • • •
>
> We do not perceive any justification for the population disparities in their plan [This] court's plan is more compact, splits fewer cities and townships, better protects minority voting rights, and still contains substantially lower population deviations.

Cf. Karcher v. Daggett, 466 U.S. 910, 911 (1984)(Stevens, J., concurring).

against partisan gerrymandering. See Polsby and Popper, The Third Criterion: Compactness as a Procedural Safeguard Against Partisan Gerrymandering, 9 Yale Law & Policy Review 301 (1991) (hereinafter "Polsby and Popper"). Polsby and Popper define gerrymandering as a manipulation of district lines for partisan purposes. See id. at 301-02.

The effect of gerrymandering on an individual's vote is essentially the same as the evil corrected by the apportionment cases in establishing the "one person, one vote" standard mandating that electoral districts have equal populations. See Reynolds v. Sims, 377 U.S. 533 (1964) (state legislatures); Wesberry v Sanders, 376 U.S. 1 (1964) (federal districts) Baker v. Carr, 369 U.S. 186 (1962); see generally Polsby and Popper at 321-26.

Polsby and Popper conclude that the most appropriate remedy for gerrymandering is to require that:

> In addition to adhering to criteria which mandate that representational districts be composed of continuous territories and have equal populations, . . . those who define district boundaries must also be required to respect a third criterion, the constraint of compactness. Without the ability to distend district lines so as to include or exclude blocks of voters whose political loyalties are known, it is not practically possible to gerrymander. The diagnostic mark of a gerrymander is the noncompact district.

Polsby and Popper at 302 (emphasis added).

The federal court analyzed its legislative redistricting plan and the other submitted plans using both a visual compactness analysis and a statistical analysis suggested by Polsby and Popper. See Emison, 782 F. Supp. at 444-45 & n.47; February 19 Order Exhibits, SA-31, SA-46. The federal court's analysis demonstrated that its legislative plan was by all measures more compact than the

other plans before it, except that the federal court's plan and appellant legislature's plan scored the same for senate district compactness on the Polsby and Popper index.[16] See Emison, 782 F. Supp. at 445 & n.47; February 19 Order Exhibits, SA-31, SA-46.

2. The Federal Court Properly Rejected Chapter 246, Chapter 246 As the Legislature Proposed to Amend It, and Chapter 246 As Adopted by the State Court As Valid Expressions of State Policy.

a. Chapter 246 Was Not Entitled To Deference As State Policy.

No party can reasonably suggest that an election could be held under Chapter 246. The federal court specifically found that it "could not discern any state policy from the unconstitutional Chapter 246." Order Denying Stay, SA-61. In light of Minnesota law regarding what is "legislative history" and this Court's preference to leave to the legislative process the first opportunity to re-draw legislative district lines, it would have been improper for the federal court to have speculated as to what the legislature might have done to correct Chapter 246's infirmities had they been recognized prior to that bill's passage and enactment.[17] Certainly,

[16]The federal court's creation of the super-majority minority senate district in Minneapolis reduced its plan ratio from .51 to .40. See February 19 Order Exhibits, SA-47 n.2. Without that district, which appellant legislature's plan does not contain, the federal court's plan is significantly more compact than appellant legislature's plan. See id.

[17]The Minnesota Supreme Court described materials that are "legislative history" in Handle With Care v. Department of Human Serv., 406 N.W.2d 518, 522 (Minn. 1987) (quotation omitted):

> [W]e may consider events leading up to [the legislation], the history of its passage, and any modifications made during its

the federal court was not "clearly erroneous" in refusing to consider as state policy a plan that it determined has pervasive constitutional and statutory defects, "contains unwarranted population deviations," and "lacks compactness statewide." See Order Denying Stay, SA-61 (emphasis added).

This is not a situation parallel to that in Weiser, 412 U.S. 782, or Upham v. Seamon, 456 U.S. 37 (1982). Unlike the plans in Weiser and Upham, the maximum population deviations in Chapter 246 ranged as much as 45.10% from the ideal. See Emison v. Growe, Civ. No. 4-91-202, Dempsey Affidavit (D. Minn., Oct. 10, 1991), SA-99; see also Emison, 782 F. Supp. at 446 n.50.[18] Chapter 246 therefore did not present issues, as in Weiser and Upham, involving "relatively minor deviations from the optimal reapportionment plan which could easily be remedied without affecting other district lines." Emison, 782 F. Supp. at 446 n.50.

Chapter 246 also created noncontiguous districts in violation of Minnesota Constitution, article IV, § 3. See, e.g., Legislative Maps, SA-184. Additionally, Chapter 246 in several instances assigned the same territory to different districts. See, e.g., id., SA-188. Because of the breadth of these defects and the

> course. We look to committee reports and journal entries. In addition the legislature now tape-records its committee meetings and floor debates, and we have, on occasion, considered transcripts of those recordings.

No committee reports or journal entries were available for the federal court's use. No minutes from the House Redistricting Committee meeting at which Chapter 246 was considered were available. The federal court did not even have a map of the legislative districts created by Chapter 246. See Emison, 782 F. Supp. at 442 n.43. Instead, appellant legislature provided only a map reflecting how the legislative majority caucuses intended to amend Chapter 246 when the legislature reconvened.

[18]In some instances, district lines necessarily were assumed in light of the inadequate descriptions in Chapter 246.

variety of possible corrections, the federal court's conclusion that it "could not discern any state policy from the unconstitutional Chapter 246," see Order Denying Stay, SA-61, is certainly not clear error.

Weiser supports the federal court's action. Even if state policy is discernible, "the District Court should defer to state policy in fashioning relief only where that policy is consistent with constitutional norms and is not itself vulnerable to legal challenge." Weiser, 412 U.S. at 797 (emphasis added); see also Karcher v. Daggett, 466 U.S. 910, 911 (1984) (Stevens, J., concurring) ("Once a constitutional violation has been found, a district court has broad discretion to fashion an appropriate remedy.").

Similarly, in Upham, 456 U.S. 37, the congressional redistricting plan contained only minimal flaws, allowing the court to perceive and preserve state policy by making only a few changes. See generally id. The federal court here distinguished Weiser and Upham and found that "Chapter 246 contained numerous infirmities, including excessive population disparities and noncontiguous districts." Emison, 782 F. Supp. at 442 & n.43, 446 & n.50.[19] The court recognized Chapter 246 for what it was -- "a hastily drafted bill containing numerous errors" that were "constitutional defects" acknowledged by all the parties. Id. at 442.

The federal court could only speculate as to how legislators might have corrected Chapter 246 had its defects been known at the time of passage. For example, correction of population disparities requires changes not only to the boundaries of the affected districts, but also to one or more neighboring districts. If contiguous districts with opposite but corresponding population deviations cannot be identified, then non-adjoining, more distant districts must be identified and changed, necessitating alterations to districts adjoining them. This "falling domino" process demonstrates the impossibility of determining any cognizable legislative intent from what remains of Chapter 246 after removal of unconstitutional or otherwise invalid legislative districts.

Appellants maintain that the federal court was limited "to redistricting only those districts that it found to be invalid." Brief of Appellants at 46. Contrary to appellants' suggestion, however, the invalid districts were by no means limited to the City of Minneapolis. Simply stated, Chapter 246 required extensive redrafting, not just technical corrections, before an election could possibly be conducted under it. Such redrafting necessarily would require the court to engage in rampant speculation regarding the policy goals that might be reflected in that chapter.

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[19]In addition to the grounds relied upon by the federal court, Weiser is distinguishable on other grounds. First, Weiser involved congressional redistricting, where stricter population equality is required, and the plan rejected by the lower court but selected by this Court in Weiser "achieved the goal of population equality to a greater extent than did [the other plan]." Weiser, 412 U.S. at 796. Also, the lower court in Weiser "did not suggest or hold that the legislative policy of districting so as to preserve the constituencies of congressional incumbents was unconstitutional or even undesirable." Id. at 797. In this case, the federal court expressly found that Chapter 246 was unconstitutional, that incumbent protection was not state policy, and that the incumbent protection goals in the City of Minneapolis violated the voting rights of minority residents of that city. See Emison, 782 F. Supp. at 436-42 & n.37.

b. The Proposed Amendments to Chapter 246 Were Not Entitled to Deference As State Policy.

Senate File 1596[20] was passed by the legislature but vetoed by the Governor in January 1992. Appellants imply that Senate File 1596 was proper state policy, but they fail to reveal that the legislation was vetoed and therefore could not be considered state policy. Cf. Brief of Appellants at 45 with Emison, 782 F. Supp. at 442; see also Sixty-Seventh Minnesota State Senate v. Beens, 406 U.S. 187, 197 (1972) (refusing to treat vetoed reapportionment plan as state policy). Because of the Governor's veto, however, Senate File 1596 was not entitled to deference under Weiser, 412 U.S. 783. See id., Major v. Treen, 574 F. Supp. 325, 335-36 n.15 (E.D. La. 1983); Carstens v. Lamm, 543 F. Supp. 68, 79 (D. Colo. 1982); Shaver v. Kirkpatrick, 541 F. Supp. 922, 932 (W.D. Mo.), aff'd sub nom. Schatzle v. Kirkpatrick, 456 U.S. 966 (1982)[21]; O'Sullivan v. Brier, 540 F. Supp. 1200, 1202 (D. Kan. 1982).

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[20]Senate File 1596, covering 63 pages of text, proposed to correct 160 errors in more than 30 state senate districts and house districts in approximately one-third of the state's 87 counties. See Emison, 782 F. Supp. at 446 n.50; Senate File 1596, SA-120.

[21]Throughout this litigation, appellants have cited Shaver for the proposition that a vetoed redistricting plan may constitute state policy, and they continue to do so here. See, e.g., Brief of Appellants at 47-48. The opinion itself suggests otherwise:

> [W]e cannot simply embrace as our own the bill that went the furthest or that experts believe would have or could have passed. Such action would be a massive intrusion into the legislative process. We would, in effect, be amending the rules for enacting legislation. Although political scientists may argue over the extent to which the legislative process reflects the will of the people, we must take the procedures as we find them.

Shaver, 541 F. Supp. at 932.

Courts have consistently held that vetoed redistricting plans are not "state policy." See id. In O'Sullivan, 540 F. Supp. at 1202, the district court addressed precisely this question, stating:

> Although a federal court should defer to any enacted, constitutionally acceptable state redistricting plan, [Weiser, 412 U.S.] at 795, 93 S. Ct. at 2354, we are not required to defer to any plan that has not survived the full legislative process to become law. See Sixty-Seventh Minnesota State Senate v. Beens, 406 U.S. 187, 197, 92 S. Ct. 1477, 1484, 32 L. Ed. 2d 1 (1972).

See also Major, 574 F. Supp. at 335-36 n.15 ("Both the Governor and the legislature are integral components of the legislative process; thus any plan that does not survive this process to become law must be regarded as 'proffered current policy' which, though entitled to thoughtful consideration, cannot be deemed a clear articulation of established state goals."); Carstens, 543 F. Supp. at 79. As recognized in Carstens, appellants' position would mean that a partisan state legislature could "simply pass any bill it wanted, wait for a gubernatorial veto, file suit on the issue and have the Court defer to their proposal." Carstens, 543 F. Supp. at 79. No court should override a governor's veto in this way, when the legislature has not done so. See id.

Further, the federal court held that "Chapter 246, as well as the modifications proposed in Senate File 1596, do not [sic] provide a remedy for the diminution of minority voting rights we have addressed." Emison, 782 F. Supp. at 442. On that ground as well, Chapter 246 and Senate File 1596 were not entitled to deference. See id.

c. The State Court's Revisions to Chapter 246 Were Not Entitled to Deference As State Policy.

Even if the state court's plan had been properly presented

to the federal court (see infra § II.C), the plan would not have been entitled to deference by the federal court, which had carefully maintained its jurisdiction over all the issues raised by the parties before it. In fact, the federal court found that the state court plan perpetuates violations of the Voting Rights Act. See Emison, 782 F. Supp. at 440. In light of this finding and the Governor's express rejection of Senate File 1596, which was virtually identical to the state court's legislative plan, Weiser mandates that the federal court not give deference to that state court plan. Like Chapter 246 and Senate File 1596, Chapter 246 as adopted by the state court was "vulnerable to legal challenge," as is reflected by the federal court's findings of statutory and constitutional violations. Cf. id. with Weiser, 412 U.S. at 797.

C. The State Court's Legislative Redistricting Plan Was Not Entitled to Preclusive Effect.

1. The State Court's Plan Was Not Preclusive Under the Full Faith and Credit Act.

Under the Full Faith and Credit Act, 28 U.S.C. § 1738, a valid and authenticated state judgment is entitled to full faith and credit in federal courts to the extent that the judgment would have preclusive effect under the state's laws. See 28 U.S.C. § 1738; Marrese v. American Academy of Orthopaedic Surgeons, 470 U.S. 373, 380 (1985); 18 C. Wright, A. Miller & E. Cooper, Federal Practice & Procedure, § 4469 at 659-60 (1981, supp. 1991). To merit such treatment, however, the judicial records or proceedings at issue must carry the attestation of the clerk and annexation of the seal of the court from which the records are derived, if a seal exists. See 28 U.S.C. § 1738. Only acts, records, or proceedings that have been so authenticated shall receive a second court's "full faith and credit." See id.

Appellants in seeking full faith and credit for the state court's legislative redistricting plan fail to note that the state court's acts, records, and proceedings were never authenticated in the manner prescribed in § 1738. Lacking such attestation, the state court's plan was never proved or admitted in the federal court within the meaning of the Full Faith and Credit Act, and that Act therefore does not apply to mandate preclusion in subsequent judgments. See id.

Where a second judgment inconsistent with the first is reached, the second judgment prevails "whether the res judicata[22] effects of the first judgment were ignored by the parties or expressly rejected by the court in the second action." 18 Wright, Miller & Cooper, § 4404 at 26 (citing Restatement Second of Judgments § 15 (1981); Restatement Second of Conflict of Laws § 114 (1971); Ginsburg, Judgments in Search of Full Faith and Credit: The Last-in-Time Rule for Conflicting Judgments, 82 Harv. L. Rev. 798 (1969); Balbirer v. Austin, 790 F.2d 1524, 1528-29 (11th Cir. 1986); Americana Fabrics, Inc. v. L & L Textiles, Inc., 754 F.2d 1524, 1529-30 (9th Cir. 1985); American Postal Workers Union v. United States Postal Service, 736 F.2d 317, 319 (6th Cir. 1984)) (footnote added). Where, as here, preclusion was never properly raised, giving effect to the second judgment is justified by appellants' failure to argue preclusion in the second proceeding. See id. at 26-27. Preclusion is an affirmative defense that is lost when not asserted. See id. at 26.

Appellants in reply will likely contend that the state court's legislative redistricting plan was presented to the federal court in

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[22] As used by commentators, the term "res judicata" collectively refers to both "claim preclusion" and "issue preclusion." See 18 Wright, Miller & Cooper, § 4402 at 6-7; see also Marrese, 470 U.S. at 376 n.1 (discussing this Court's use of the terms "claim preclusion" and "issue preclusion").

the form of a January 1992 motion asking the federal court to reconsider a previously-denied motion to stay. However, that motion did not offer the state court's legislative plan in the manner required under the Full Faith and Credit, and the state court's plan was at that time not reduced to a judgment in any event, and appellants are therefore not entitled to the benefits of that Act.

2. The State Court's Legislative Redistricting Plan Was Not Preclusive Under Minnesota Law.

Even if presented properly to the federal court under the Full Faith and Credit Act, the state court's legislative redistricting plan was not entitled to preclusive effect under Minnesota law. Full faith and credit preclusion is governed by state law. See 28 U.S.C. § 1738; Marrese, 470 U.S. at 380. In Minnesota, application of issue preclusion is appropriate where the issue was identical to one in a prior adjudication, there was a final judgment on the merits, the estopped party was a party or in privity with a party to the prior adjudication, and the estopped party was given a full and fair opportunity to be heard on the adjudicated issue. See Ellis v. Minneapolis Comm'n on Civil Rights, 319 N.W.2d 702, 704 (Minn. 1982). The state court's legislative redistricting plan is not entitled to issue preclusive effect under these requirements.

First, the issues in the federal proceeding were not identical with the ones involved in the state action. As the federal court recognized, the federal action involved Voting Rights Act claims and challenges to Chapter 246 that were not raised by the pleadings in the state action. See Order of Stay, A-144-145. The first Ellis factor is not met.

Second, appellants argue that there was sufficient identity between the state and federal parties because of similar legal

representation, and they cite in support of that position a Supreme Court decision apparently applying federal common law to define "privity" for issue preclusion purposes. See Brief of Appellants at 26 (citing Montana v. United States, 440 U.S. 147, 154-55 (1979)). Nevertheless, in Minnesota, the appearance or "privity" with an appearing party that is necessary to apply issue preclusion is clearly either an actual adversarial appearance in litigation of one's own rights, see Margo-Kraft Distrib., Inc. v. Minneapolis Gas Company, 200 N.W.2d 45, 47 (Minn. 1972), or the exertion of sufficient control over the action in furtherance of one's own interests, even though not a party, such that the non-party has effectively had its day in court, see Denzer v. Frisch, 430 N.W.2d 471, 473 (Minn. Ct. App. 1988).

Mere representation of some parties by the same counsel does not constitute either an appearance or privity with an appearing party for issue preclusion purposes, particularly where the federal proceeding included parties (i.e., the Benson appellees) neither involved in the state proceeding nor represented by counsel who appeared there. The presence in the federal action of the Benson appellees, who had no control over or other connection with the state case, prevents application of issue determinations made in that case to issues arising in the federal action. Cf. Ellis, 319 N.W.2d at 704.

Appellants also ignore the fact that the federal and state parties whom appellants allege are in privity actually sought the adoption of different legislative redistricting plans in their respective actions. In light of that fact, and other differences noted above, appellants have failed to demonstrate that the third factor of the Ellis test is met in support of issue preclusion.

Finally, the Benson appellees had no "full and fair opportunity" to be heard on the adjudicated issues in the state

proceeding, because they did not appear in that proceeding. There was a consistent challenge to the state court's jurisdiction to adjudicate Voting Rights Act § 2 issues at all, let alone to provide a full and fair opportunity that would preclude parties not present in the state proceeding. See Cotlow v. Growe, MX 91-001562, Memorandum of Plaintiff-Intervenors Regarding Exclusive Federal Jurisdiction Over Voting Rights Act Claims (Minn. Spec. Redis. Panel, Oct. 7, 1991), SA-107-114. Therefore, appellants have also failed to meet the fourth factor of the Ellis test. The state court's plan is not entitled to issue preclusive effect because of all of these deficiencies.

D. The Claims Presented to the Federal Court Were Viable and Were Not Moot.

The central question in determining whether a claim is moot is "whether decision of a once living dispute continues to be justified by a sufficient prospect that the decision will have an impact on the parties." 13A C. Wright, A. Miller & E. Cooper, Federal Practice & Procedure, § 3533 at 212 (1984, supp. 1991); see also County of Los Angeles v. Davis, 440 U.S. 625, 631 (1979). "[T]he burden of demonstrating mootness is a heavy one." County of Los Angeles, 440 U.S. at 631 (quotation omitted).

Appellants did not raise the issue of mootness at any time prior to this appeal, but they contend here that the federal court's legislative redistricting plan was invalid because appellees' claims regarding legislative redistricting were mooted. Specifically, appellants contend that the Emison appellees' challenge to Minnesota's 1982 legislative redistricting plan was mooted by

Chapter 246's repeal of that plan.[23] See Brief of Appellants at 28. Appellants further argue that the Benson appellees' claims, which challenged the legislative redistricting plans in Chapter 246, were made moot by the state court's eventual holding that Chapter 246 was unconstitutional. See id.

Appellants in their argument disregard the impact of the state court's recognition of Chapter 246's unconstitutionality. When Chapter 246 was declared unconstitutional by the state court on October 1, 1991, its provisions, including its repeal of the 1982 plans, were invalidated. The 1982 districts remained in effect, and the Emison appellees' claims were without question viable at that point.

In addition, both the Emison and Benson appellees sought affirmative relief from the federal court. The Emison appellees specifically requested that the federal court issue an appropriate legislative redistricting plan. See Emison Complaint, A-90-91; see also Benson Complaint, SA-75-76. No remedy sufficient to provide this relief was promulgated until the federal court issued its plan on February 19, 1992.

The state court's legislative redistricting plan did not afford complete relief to appellants, as it could not properly address Voting Rights Act claims pled only in the federal action, and because it was in fact found to perpetuate Voting Rights Act

[23]This argument is, at best, inconsistent. Appellants maintain that the Emison appellees' claims challenging the 1982 legislative districts were mooted by the enactment of Chapter 246, yet they fail to apply the same analysis to their own claims in the state action, which also challenged only the 1982 districts. See Cotlow Complaint, A-175-181, A-185-187.

violations in Minnesota election districts.[24] Until the relief sought by the Emison and Benson appellees was granted, therefore, their consolidated actions were not moot. Without complete relief for the injury, the injury still existed. Cf. 13A Wright, Miller & Cooper, § 3533.2 at 238-39 ("Decision remains appropriate [and case is not moot although some issues are resolved] if there is a reasonable prospect that the court may award additional relief.").

III. THE FEDERAL COURT PROPERLY ISSUED ITS CONGRESSIONAL REDISTRICTING PLAN.

The federal court was unquestionably in compliance with Germano when it issued a congressional redistricting plan to fill the void left by both the state legislative process and the state court. See Germano, 381 U.S. at 409-10 (federal court should act where state fails to adopt a valid redistricting plan in a timely manner). When the federal court promulgated its congressional redistricting plan on February 19, 1992, there was no other congressional plan available from either the legislative process or the state court, nor was there any expression of state policy that the

[24]The only true advisory opinion or determination of a moot point in these cases was the state court's holding on the Voting Rights Act, as that Act related to Chapter 246. The state court first declared Chapter 246 unconstitutional by order dated October 1, 1991. See Procedural Order No. 4, A-219-220. Despite this finding and the lack of any Voting Rights Act claims before the state court, that court subsequently analyzed the unconstitutional and therefore invalid law for Voting Rights Act violations, issuing a preliminary one-sentence holding on the Voting Rights Act on November 21, 1991, with the final order not issued until December 9, 1991, or entered until January 30, 1992. See Findings of Fact, Conclusions of Law, and Preliminary Order for Judgment on Legislative Redistricting, A-244; Findings of Fact, Conclusions of Law, and Order for Judgment on Legislative Redistricting, A-259; Order for Entry of Judgment, A-356. Given the October holding that found Chapter 246 to be invalid on state and federal constitutional grounds, the state court's delayed examination of Chapter 246 for statutory violations not alleged in that proceeding was wholly unnecessary.

federal court did not consider.

A. Senate File 1597 Was Neither State Policy Upon Which the Federal Court Should Have Based Its Congressional Redistricting Order Nor a Valid Congressional Redistricting Plan.

Senate File 1597, the legislature's sole attempt at congressional redistricting, was vetoed by the Governor immediately after its passage. See Emison, 782 F. Supp. at 433-34. It therefore cannot constitute state policy. See Sixty-Seventh Minnesota State Senate v. Beens, 406 U.S. 187, 197 (1972) (refusing to treat vetoed reapportionment plan as state policy). Senate File 1597 was accordingly not entitled to deference under Weiser, 412 U.S. 783. See id.; see also supra § II.B.2.b.

Appellants' reliance on Weiser in an attempt to support consideration of the vetoed congressional redistricting plan is misplaced. The plan from which state policy was discerned in Weiser had not been expressly rejected by the executive in the course of the redistricting process, and the plan had in fact been approved by the entire legislative process. See Weiser, 412 U.S. at 784. Cf. Beens, 406 U.S. at 197. Weiser therefore does not speak to the circumstances presented by Senate File 1597.

In arguing that the federal court should have based its congressional redistricting plan on Senate File 1597, appellants also ignore the fact that even the state court has held that Senate File 1597 is not entitled to consideration because it is not "state policy." See Procedural Order No. 7, A-445-446 n.1; see also Emison, 782 F. Supp. at 446-47 (rejecting Senate File 1597 as state policy).[25]

[25]Appellants also fail to mention that the state court continued to ignore Senate File 1597 when that court recently proposed a congressional redistricting plan, almost two months after the federal court's plan was ordered, precluding state court action. Cf. Emison, 782 F. Supp. at 446-48 with Final Order, ABA-3.

Appellants' argument on the congressional plan therefore wholly disregards the state court, whose actions they otherwise support.

Senate File 1597 was not state policy because it had been vetoed, and it was not a valid congressional redistricting plan for the same reason. See Smiley v. Holm, 285 U.S. 355, 373 (1932) (Minnesota redistricting process requires legislative and executive approval). Senate File 1597 was therefore neither state policy nor a valid redistricting plan from the legislative process to which the federal court was obligated to defer in fashioning a congressional redistricting plan.

B. The State Court's April 15, 1992, Congressional Redistricting Plan Was Precluded by the Federal Court's Earlier Issuance of a Valid Congressional Plan.

The state court's congressional redistricting plan was issued on April 15, 1992, almost two months after the federal court's plan was entered. When the federal court issued its plan, the state court's plan was therefore not even available for consideration. The state court in fact indicated that it would not issue a congressional plan, given the existence of the federal court's plan and professed concerns for expense and potential confusion. See Procedural Order No. 7, A-445-446.[26]

[26]The state court's issuance of a congressional redistricting plan after previously indicating that it would not do so has served only to unnecessarily complicate this case. In ordering its congressional redistricting plan, the state court indicated that it was presenting its plan because of this Court's noting of probable jurisdiction. See Final Order, ABA-4. However, the state court was admittedly aware of this appeal of the federal court's congressional plan at the time of the state court's earlier decision to refrain from proposing its own congressional redistricting plan. See Procedural Order No. 7, A-445.

The state court in its final order for a congressional redistricting plan also stated that publication of its plan would not "create undue confusion or exacerbate any difficulties of federal-state interaction." See Final Order, ABA-4.

Furthermore, the state court was collaterally estopped from issuing a congressional redistricting plan, because the federal court's plan had already resolved all congressional redistricting issues and had been raised as a preclusive judgment in the state court proceeding. See Memorandum of Law of Plaintiff-Intervenors In Support of Motion to Dismiss, SA-116-117. As discussed above, Minnesota courts have long held that preclusion operates to prevent re-litigation of an issue when (1) the issue before a court is identical to one in a prior adjudication, (2) there was a final judgment on the merits, (3) the party to be estopped appeared in the prior case or was in privity with a party appearing there, and (4) the party to be estopped was given a full and fair opportunity to be heard on the issue. See Ellis, 319 N.W.2d at 704; see also Oldham v. Pritchett, 599 F.2d 274, 279 (8th Cir. 1979) (applying identical factors to determine preclusive effect of federal judgment); see generally 18 C. Wright, A. Miller & E. Cooper, Federal Practice & Procedure, §§ 4419-20, 4423, 4432, 4435, 4448 (discussing similar factors) (1981, supp. 1992).[27] The federal court's prior adjudication of congressional redistricting meets all of these requirements.

First, the federal panel addressed the exact issue of congressional redistricting that the state court later attempted to adjudicate. In doing so, the federal court had before it pleadings that sought the same relief sought by plaintiffs in the state court.

Publication of the plan, however, has had precisely that effect, as the arguments here indicate.

[27]The preclusive effect of a federal court's judgment is controlled by federal rules in some instances and state rules in others. When, as here, there is no difference in application of preclusion rules, no choice of law need be made. Cf. Oldham, 599 F.2d at 279 (no need to resolve issue of applicability of federal as opposed to state preclusion rules where estoppel is accomplished under both).

Thus, while the state court did not have before it all legislative redistricting claims that were alleged in the federal action, there were parallel allegations regarding congressional redistricting in both proceedings. Cf. Emison Complaint, A-77-82 with Cotlow Complaint, A-181-185.

Second, the federal court's plan of congressional redistricting was issued as a final judgment on February 19, 1992. See Emison, 782 F. Supp. at 446-48. That judgment is a valid judgment by a court of competent jurisdiction, and it is entitled to preclusive effect against any later attempted judgments by the state court. See Embry v. Palmer, 107 U.S. 3, 9-10 (1982); see also 18 Wright, Miller & Cooper, § 4468 at 648-49.

Third, the plaintiffs, defendants, and defendant-intervenors in the state case were all parties before the federal court when that court issued its order and plans. Indeed, plaintiffs Patricia Cotlow, et al.; defendant Hennepin County Attorney; and the legislature as defendant-intervenors all voluntarily chose to intervene in the proceedings before the federal court.

Finally, all appellants participated fully in both proceedings. Moreover, the federal court had before it precisely the same proposed congressional plans that were ultimately submitted to the state court.

The federal court's congressional redistricting plan was validly promulgated and was based on all discernible state policy. It was preclusive against the state court's later plan, and it should be given effect.

CONCLUSION

Appellants have failed to demonstrate that the federal court's findings of fact and application of law were clearly erroneous. The federal court was not required to defer to the state court, and it properly retained jurisdiction.

The federal court correctly determined that plans based on the unconstitutional provisions of Chapter 246 perpetuated Voting Rights Act violations. The federal court's legislative redistricting plan meets all constitutional and statutory requirements. Overturning it and allowing implementation of the state court's plan would create a precedent not only of allowing state courts to enforce Voting Rights Act § 2, but also would allow them to do so when no § 2 claims are presented in the pleadings before them.

The federal court's congressional redistricting plan was properly based on discernible state policy, and it precluded state court congressional redistricting. The federal court's congressional plan is valid and should be affirmed.

For the above stated reasons, the Emison appellees, the Benson appellees, and appellee Lundgren respectfully request that this Court affirm the federal court's order.

Dated: June 30, 1992

Respectfully submitted,

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STATE OF MINNESOTA
SPECIAL REDISTRICTING PANEL
C8-91-985

Patricia Cotlow, Phillip Krass, Sharon LaComb, James Stein and Theodore Suss, individually and on behalf of all Citizens of Minnesota similarly situated,	)	
Plaintiffs,	)	
and	)	
John Walker, Howard Miller, Don Sudor, and Nkajlo Vangh,	)	AFFIDAVIT OF BRUCE D. WILLIS
Plaintiff-Intervenors,	)	
vs.	)	
Joan Growe, Secretary State of Minnesota; and Patrick H. O'Connor, Hennepin County Auditor, individually and on behalf of all Minnesota county chief election officers,	)	
Defendants,	)	
and	)	

The Seventy-seventh Minnesota)
State House of Representatives)
and the Seventy-seventh Minnesota)
State Senate,)
)
Defendant-Intervenors.)

BRUCE D. WILLIS, being first duly sworn, deposes and states that:

1. He is one of the attorneys for plaintiff-intervenors John Walker, Howard Miller, Don Sudor, and Nkajlo Vangh in this matter.

2. On March 2, 1992, your affiant served on behalf of plaintiff-intervenors a Notice of Motion and Motion for Dismissal of Claims Regarding Congressional Redistricting, or in the Alternative, for Summary Judgment.

3. In its Procedural Order No. 8, dated March 10, 1992, this Panel scheduled a hearing on plaintiff-intervenors' motion for March 23, 1992.

4. On March 17, 1992, your affiant received a telephone call from Judge Lansing, one of the members of this Special Redistricting Panel, asking whether plaintiff-intervenors would agree to a proposed postponement of the March 23, 1992, hearing until more was known about the United States Supreme Court's reaction to the pending appeal of the order issued in the parallel federal action. It was agreed that your affiant would give Judge Lansing a response the following day.

5. On March 18, 1992, your affiant called Judge Lansing's chambers and left a message that plaintiff-intervenors agreed that the hearing could be postponed, as discussed the day before with Judge Lansing.

6. On March 18, 1992, this Panel issued an order postponing indefinitely the March 23, 1992, hearing.

7. At no time did plaintiff-intervenors withdraw motion, and at no time did plaintiff-intervenors agree that their motion should never be heard.

8. On April 15, 1992, this Panel issued a Final Order by which it announced its own plan of congressional redistricting, wholly ignoring plaintiff-intervenors' pending motion, dated March 2, 1992, and wholly failing to address the issues raised by that motion.

/s/
Bruce D. Willis

Subscribed and sworn to before
me this __ day of April 1992.

/s/
Notary Public

STATE OF MINNESOTA
SPECIAL REDISTRICTING PANEL
C8-91-985

Patricia Cotlow, Phillip Krass, Sharon LaComb, James Stein, and Theodore Suss, individually and on behalf of all Citizens of Minnesota similarly situated,	
Plaintiffs,	
and	
John Walker, Howard Miller, Don Sudor, and Nkajlo Vangh,	PLAINTIFF-INTERVENORS' MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR WITHDRAWAL OF FINAL ORDER AND GRANTING OF THE RELIEF REQUESTED IN PLAINTIFF-INTERVENORS' MOTION DATED MARCH 2, 1992
Plaintiff-Intervenors,	
vs.	
Joan Growe, Secretary State of Minnesota; and Patrick H. O'Connor, Hennepin County Auditor, individually and on behalf of all Minnesota county chief election officers,	
Defendants,	
and	

The Seventy-seventh Minnesota State House of Representatives and the Seventy-seventh Minnesota State Senate,	
Defendant-Intervenors.	

On March 2, 1992, plaintiff-intervenors filed with this Panel a motion pursuant to Rules 41.01(b) and 41.02(a) of the Minnesota Rules of Civil Procedure for an order dismissing all claims of plaintiffs regarding congressional redistricting, or, in the alternative, for an order of summary judgment as to such claims, pursuant to Rule 56, on the ground that the plan of congressional redistricting issued by the United States District Court in Emison, et al. v. Growe, et al., Civ. 4-91-202 (D. Minn., Feb. 19, 1992), constitutes a prior judgment for congressional redistricting for the state of Minnesota and that this Panel is therefore precluded under the principle of collateral estoppel from issuing a separate judgment regarding congressional redistricting.

In Procedural Order No. 8, dated March 10, 1992, this Panel scheduled a hearing for March 23, 1992, on plaintiff-intervenor's motion. On March 17, 1992, Judge Harriet Lansing, a member of this Panel, telephoned counsel for plaintiff-intervenors to ask if plaintiff-intervenors would agree to a proposed postponement of the March 23, 1992, hearing until more was known about the United States Supreme Court's reaction to the pending appeal of the order issued in the parallel federal action. It was agreed that counsel for plaintiff-intervenors would give Judge Lansing a response the following day. On March 18,

1992, counsel for plaintiff-intervenors called Judge Lansing's chambers and left a message that plaintiff-intervenors agreed that the hearing could be postponed, as discussed the day before with Judge Lansing. On March 18, 1992, this Panel issued an order postponing indefinitely the March 23, 1992, hearing. At no time did plaintiff-intervenors withdraw their motion, and at no time did plaintiff-intervenors agree that their motion should never be heard. See Willis Affidavit.

On April 15, 1992, this Panel issued sua sponte a Final Order by which it announced its own plan of congressional redistricting. In doing so, the Panel wholly ignored plaintiff-intervenors' pending motion and wholly failed to address any of the issues raised by that motion. As that motion makes clear, this Panel has no authority to issue and is precluded under the doctrine of collateral estoppel from issuing a separate judgment regarding congressional redistricting.

Plaintiff-intervenors request that this Panel grant the relief requested in their motion of March 2, 1992, regarding dismissal of claims regarding congressional redistricting, or in the alternative, for summary judgment on those claims and accordingly withdraw its Final Order and plan for congressional redistricting.

DISCUSSION

On February 19, 1992, the United States District Court for the District of Minnesota issued its final order in the matter of Emison, et al. v. Growe, et al., Civ. 4-91-202 (D. Minn.). That order, and the plans for congressional redistricting set forth therein, constitute a valid and enforceable judgment by a court of competent jurisdiction. Under the theory of issue preclusion, or collateral estoppel, as applied by Minnesota courts, this Panel and the parties are barred from further adjudication or relitigation of

any claims relating to plans of congressional redistricting. See generally, Memorandum of Law of Plaintiff-Intervenors in Support of Motion to Dismiss, or in the Alternative, for Summary Judgment as to Congressional Plans, dated March 2, 1992 [cites omitted].

Plaintiff-intervenors fully set forth in their March 2, 1992, moving papers the basis for application of the doctrine of collateral estoppel and why this Panel lacks authority to issue any plan of congressional redistricting. The federal court judgment is a valid judgment regarding congressional districts.

In issuing its Final Order, the Panel has completely ignored the doctrine of collateral estoppel as specifically raised by plaintiff-intervenors' pending motion. The Panel's stated purpose in issuing a congressional plan was "to fulfill our charge of deciding this action on the merits and to allow a complete record on review." Final Order, at 4. However, by issuing its Final Order, this Panel has wholly failed to address the merits of a motion validly before it and has created a wholly incomplete record for review.

Not only has this Panel acted in error by issuing a plan of congressional redistricting in the face of the clear mandate of the doctrine of collateral estoppel, but also this Panel has acted in error by failing to address a motion that has been validly pending before it for six weeks and for which this Panel had scheduled a hearing that was postponed only as a result of contact by this Panel with counsel for plaintiff-intervenors.

On March 3, 1992, this Panel issued Procedural Order No. 7, in which it stated that: "the existence of one small court's review squarely raises the wisdom or the necessity of this panel proceeding farther." See Procedural Order No. 7, at 6. Nothing has occurred in the intervening time to change that assessment. If

anything, Justice Blackmun's review and denial of appellants' motion to stay with respect to the federal court's order for congressional redistricting in Emison v. Growe only confirms the validity of the federal court's order regarding its congressional plan and its injunction of state election officials from conducting congressional elections under any other plan. On March 3, 1992, this Panel stated:

> Because Minnesota election officials are enjoined from accepting filings or conducting elections except in accordance with that plan, we also decline to impose, at this time, an alternative plan. We are fully prepared to release a congressional plan if and when such a course of action becomes appropriate.

Procedural Order No. 7, at 7-8.

Nothing has occurred since March 3, 1992, to make the issuance of a congressional plan by this Panel appropriate. Nothing has occurred since March 3, 1992, to alter Minnesota law on collateral estoppel or to alter the merits of plaintiff-intervenors' motion before this Panel based on that doctrine.

CONCLUSION

Plaintiff-intervenors have pending before this Panel a valid motion for dismissal of all claims regarding congressional redistricting under Rules 41.01(b) and 41.02(a), or, in the alternative, for summary judgment as to those claims under Rule 56 of Minnesota Rules of Civil Procedure on the ground that the federal court's plan of congressional redistricting constitutes a valid prior judgment, and this Panel is therefore precluded under

the doctrine of collateral estoppel from issuing a separate judgment regarding congressional redistricting. In issuing its Final Order on April 15, 1992, this Panel wholly ignored that motion and its merits. Plaintiff-intervenors request that this Panel grant plaintiff-intervenors' motion that the Panel withdraw its Final Order and further that this Panel grant the relief requested by plaintiff-intervenors' in their motion of March 2, 1992.

Dated: April 17, 1992.

POPHAM, HAIK, SCHNOBRICH & KAUFMAN, LTD.

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Supreme Court, U.S.
FILED
JUL 30 1992
OFFICE OF THE CLERK

No. 91-1420

In The
Supreme Court of the United States
October Term, 1991

JOAN GROWE, SECRETARY OF STATE OF THE STATE OF MINNESOTA, ET AL.,
Appellants,

vs.

JAMES EMISON, ET AL.,
Appellees.

Appeal from the United States District Court for the District of Minnesota

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No. 91-1420

In The
Supreme Court of the United States

OCTOBER TERM, 1991

JOAN GROWE, SECRETARY OF STATE
OF THE STATE OF MINNESOTA, ET AL.,

Appellants,

vs.

JAMES EMISON, ET AL.,

Appellees.

Appeal from the United States District Court for the District of Minnesota

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INTRODUCTION

Judicial intervention by the federal courts into legislative and congressional redistricting is governed by a simple rule that recognizes the primacy of the states and limits federal involvement to situations in which state institutions are unable to complete the important process in a timely manner. The rule is well-supported by significant policy considerations. Appellees do not argue for a different jurisdictional rule; instead they claim that the leading case of Scott v. Germano, 381 U.S. 407 (1965), should be narrowly construed in a manner which would effectively eliminate the role of the state judiciary and result in federal oversight and primacy

over all state redistricting matters. Furthermore, Appellees argue that the effective guidelines established by this Court in Thornburg v. Gingles, 478 U.S. 30 (1986), to govern claims of Voting Rights Act violations should be disregarded and replaced by an unpredictable standard which leaves the federal courts with nearly unfettered discretion in review of such claims.

Appellees' arguments are not only unsupported by law, they are plainly undesirable as a matter of policy. Lacking coherent legal and policy arguments for their positions, appellees devote much of their brief to a flawed and inconsistent attack on the state court judgment, the state court proceeding, and the state court itself. Appellants' position, that the Minnesota Legislature and the state judiciary acted in a prompt and constitutional manner to redraw the state's election districts, is supported by the important precedents of this Court and sound policy considerations. The contrary judgment of the federal court must be vacated.

ARGUMENT

I. THE FEDERAL COURT WAS REQUIRED TO DEFER TO THE PARALLEL STATE COURT ACTION UNDER THE ABSTENTION PRINCIPLES OF SCOTT V. GERMANO.

Appellees appear to concede that the doctrine set forth in Scott v. Germano, 381 U.S. 407 (1965) (per curiam), requires federal district courts to defer to parallel state court redistricting actions. They nonetheless argue that the federal court was permitted to adopt redistricting plans in this action because the state court in Cotlow v. Growe, Court File Nos. C8-91-985 & MX

91-001562 (Minn. Dist. Court, Special Redistricting Panel), allegedly failed to adopt a congressional redistricting plan in a timely manner and allegedly failed to adopt a valid legislative redistricting plan. In effect, appellees read Germano as holding that if a federal court does not agree with either the state court's decision or the timing of that decision, the federal court may intervene and adopt its own plan.

Appellees' construction of Germano leaves no effective role for state courts in the redistricting process. Apart from lacking a legal basis, this construction runs directly counter to the policy underpinnings of Germano. Appellees offer no adequate justification for the federal court's refusal to defer to the state court action.

A. The State Court Would Have Adopted a Congressional Redistricting Plan in a Timely Manner but for the Federal Court's Preemptive Actions.

Appellees claim that the federal court fully complied with Germano in issuing a congressional plan because neither the Legislature nor the state court adopted a congressional plan in timely fashion. In fact, however, the state court did act in a timely manner to adopt a congressional redistricting plan. Any delay can be solely attributable to the federal court's repeated attempts to stop the state court from proceeding.

The state court was prepared to issue its plan on March 3, 1992. A-446.[1] Adoption of a plan at that time would have

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[1]References to the Appendices and Record in this action are denoted as follows:

Appendix to Jurisdictional Statement	-- A-#
Appellees' Supplemental Appendix	-- SA-#
Joint Appendix	-- JA-#
Appendix to Brief of Appellants	-- ABA-#
Record (Docket Number of Document in Federal District Court's File)	-- R-#

permitted elections to proceed on schedule; the state's congressional districts did not need to be drawn until at least late March, 1992.[2] Because the Legislature did not enact a congressional redistricting plan before it adjourned in May, 1991, the state court chose not to adopt a congressional plan until after the Legislature reconvened in January, 1992, thereby giving the Legislature further opportunity to enact a congressional plan. A-442; ABA-3.[3] The federal court's injunction of the state court proceedings from December 5, 1991, until January 10, 1992, delayed the state court's efforts to begin drafting a congressional plan. A-359 to A-361; A-445 to A-446.

Once the federal court's injunction was set aside and the Legislature failed to enact a congressional redistricting plan,[4] the state court proceeded diligently and responsibly to create its own plan; it received proposed plans and briefs and held a hearing on the merits of the competing plans on February 17, 1992. See Brief of Appellants at 10. The federal court entered its judgment

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[1]In Minnesota, legislative districts, but not congressional districts, must be drawn before precinct boundaries can be drawn. See Minn. Stat. § 204B.14 subd. 3 (1990). In 1992, Minnesota's precinct caucuses were held on March 3, 1992. County and legislative district conventions were held in late March and early April of 1992 and congressional district conventions were held in late April and early May, 1992.

[2]The state court acted earlier on legislative redistricting because the Legislature had already enacted a plan. A-263 to A-264. To implement the law, Act of May 29, 1991, ch. 246, 1991 Minn. Laws 741 ("Chapter 246"), the state court merely needed first to interpret it and then to correct its few remaining technical defects. See A-261 to A-262.

[3]The Legislature was in adjournment from May 20, 1991 until January 6, 1992. It considered the issue of congressional redistricting after reconvening. Its plan, Senate File 1597 was vetoed on January 10, 1992. The Senate voted to override the veto on February 20, 1992. The House did not attempt to override the veto.

adopting a congressional redistricting plan on February 19, 1992, and preempted the state court action just as the state court was preparing to issue its plan. The state court indicated that it was prepared to issue its congressional plan on March 3, 1992. A-446.

When a state court is proceeding diligently to produce a redistricting plan in a timely manner, the doctrine set forth in Germano clearly and unequivocally prohibits interference by a federal court. Under no circumstances can the state court be found to have proceeded in an untimely manner so as to warrant federal court intervention, as appellees suggest. The federal court's violation of Germano in drafting a congressional plan is especially egregious as the "delays" resulted from the fact that the state court was twice prevented from proceeding more expeditiously by the federal court's earlier improper injunctions. It is "bootstrapping" in the most outrageous manner to permit a federal court to avoid Germano by wrongly enjoining a state court proceeding and then using the delay engendered as an excuse to override concurrent state jurisdiction.

B. The Federal Court Was Not Permitted Under Scott v. Germano To Disregard the State Court's Legislative Redistricting Plan.

The state court adopted its final legislative redistricting plan on January 30, 1992, nearly three weeks prior to the federal court's judgment.[5] Appellees contend that the federal court was justified in adopting a conflicting legislative redistricting plan because the state court's plan was not "valid." This contention is

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[5]Appellants noted in their initial brief that the state court's judgment adopting a legislative redistricting plan became final and unappealable on April 29, 1992, and that the state court's judgment is not before this Court on appeal. Appellees fail to respond to this point or to explain how the conflict between the state and federal court judgments adopting incompatible legislative redistricting plans can be resolved unless the federal court's judgment is reversed.

unsupported by any authority or principle and is contrary to well-settled rules of federalism.

Appellees erroneously assume that the federal court properly sat in review of the state court's judgment. As this Court has made plain, however, "[l]ower federal courts possess no power whatever to sit in direct review of state court decisions." Atlantic Coast Line R.R. v. Brotherhood of Locomotive Eng'rs, 398 U.S. 281, 296 (1970) (emphasis added). This rule is essential in our federal system. See id. at 297 (the "fundamental principle of a dual system of courts leads inevitably" to the rule preventing federal courts from interfering with state court actions). As this case strongly demonstrates, it would be wasteful and unworkable to permit lower federal courts to sit in review of the decisions in parallel state court redistricting actions. If such lower federal court review were permitted, election officials would be confronted with inconsistent judgments, unnecessary appeals would result, and parties dissatisfied with a state court's rulings would be encouraged to relitigate issues in federal court.

Germano does not hold or even suggest that a federal court may review a state court's judgment. In fact, Germano holds just the opposite. The Court stated that "in the event a valid reapportionment plan is not timely adopted [the federal district court] may enter such orders as it deems appropriate, including an order for a valid reapportionment plan . . . ." Germano, 381 U.S. at 409-10 (emphasis added). A federal court must presume that a state court's judgment is valid unless and until the state court's judgment is reversed. See Brief of Appellants at 24. Moreover, Germano calls for respect of state court redistricting efforts; it does not permit lower federal courts to pass judgment on the validity of a state court judgment.

The only authority on which appellees rely for their construction of Germano is the recent decision in Members of the Cal. Democratic Congressional Delegation v. Eu, Court File No. C-91-3383 (N.D. Cal. March 3, 1992). That decision is contrary to

appellees' position, however, and supports appellants' position. The federal district court in that case did not address the validity of the state court's judgment, but simply satisfied itself that the state court action had provided the parties with due process. The federal district court expressly refused to review the merits of the state court's holding and stated: "Once the state provides a forum that accords the parties due process, the United States Supreme Court considers that state forum to be as competent as federal courts for the adjudication of federal issues." Id. slip op. at 16; see also Mahoney v. Burkhardt, 299 F. Supp. 787, 789 (D.N.J. 1969) (federal court deferred to parallel state court redistricting action and indicated that any challenges to state court plan should be addressed by appeal).

Under Germano, the federal court in this action was required to defer to the state court proceeding. The state court's judgment was never appealed and therefore was never found to be invalid. The federal court was not free to consider the validity of the state court's judgment and, as a result, the federal court's judgment adopting a legislative redistricting plan should be vacated.

C. The State Court's Judgment Adopting a Legislative Redistricting Plan Addressed All Issues Regarding Chapter 246 Which Were Raised in the Federal Court.

As an alternative argument, appellees reiterate the federal court's contention that the state court ruling did not address all the issues raised in the federal court action and, as a result, the federal court action was proper. Brief of Appellees at 14. First, appellees state that "the pleadings in the state court did not challenge the constitutionality of Chapter 246." Id. at 5; see also id. at 15, 40, 43 n.23. This assertion is false, as appellees must know. Appellees' lead counsel signed a complaint in the state court action

as attorney for intervening plaintiffs alleging that "[t]he new state legislative districts created by the 1991 legislature do not meet constitutional and other legal requirements." ABA-26. The original complaint in the state court action also raised issues regarding the "validity of any new legislative apportionment law." A-186 to A-188. The state court's plan addressed all alleged constitutional defects in Chapter 246, and no party has suggested that any such defects exist in the plan that the state court adopted.[6]

Second, appellees assert that no Voting Rights Act claims were raised in the state court action. It is undisputed that no party in either the state court action or the federal court action alleged that Chapter 246 violated the Voting Rights Act. Moreover, before adopting a legislative redistricting plan the state court was required to, and did, ensure that the plan complied with the Voting Rights Act.

Third, appellees contend that the federal court action, and not the state court action, involved claims that the 1982 legislative districts violated the Voting Rights Act. This contention is irrelevant, because once Chapter 246 was enacted, the 1982 legislative districts were no longer at issue. Furthermore, all parties throughout the pendency of both cases have agreed that the 1982 districts were unconstitutional because of gross population disparities. Thus, any claims that the 1982 districts violated the Voting Rights Act were really irrelevant even before Chapter 246 was enacted. Appellees' presumption that the 1982 districts were somehow reinstated for review of Voting Rights Act violations once it was determined that Chapter 246 contained technical defects is unsupported by any rule of law or precedent.

[6]Appellees also suggest, as the federal court did, that the state court's legislative redistricting plan was not timely. They contend that, although the state court plan was adopted before the federal court's plan, there was not enough time for the appeal process to run its course. The obvious fallacy of this argument is that the federal court judgment likewise was subject to appeal.

II. THE STATE COURT'S JUDGMENT BARRED THE FEDERAL COURT FROM ADOPTING A LEGISLATIVE REDISTRICTING PLAN.

Strong policy reasons support Germano's requirement that federal courts defer to state court redistricting actions. Once a state court adopts a redistricting plan, additional sound legal doctrines bar federal courts from intruding on the state court's ruling. The Full Faith and Credit Act, 28 U.S.C. § 1738, and the doctrines of collateral estoppel and mootness are based on fundamental principles of comity, federalism, and judicial economy and are intended to prevent courts from issuing inconsistent and incompatible judgments. These doctrines should have prevented the federal court's wasteful interference with the state court's legislative redistricting plan.

Appellees contend that the Full Faith and Credit Act does not apply in this case because the federal court was not adequately notified of the state court's judgment. See Brief of Appellees at 38-40. The federal court was informed of the state court's order for judgment on several occasions and expressly took notice of the order. See Brief of Appellants at 22-23. No issue was raised as to the authenticity of that judgment in the federal court action by appellees or by the federal court. Appellees have therefore waived any objection they might have had as to the authenticity of the judgment. The federal court, having knowledge of the judgment, was required to respect the state court's judgment unless and until it was reversed. See Brief of Appellants at 24.[7]

[7]Appellees claim that the "last-in-time rule for conflicting judgments" prevents this Court from reviewing the federal court's decision to ignore the state court's judgment. Brief of Appellees at 39. As the authorities cited by appellees on this point indicate, this rule applies only in a third action, where two judgments in prior actions are in conflict. The rule does not apply to this situation where the judgment in the second action is on appeal.

Appellees also assert that the state court's judgment regarding legislative redistricting did not collaterally estop the parties in the federal action. See Brief of Appellees at 40-42. In a telling turn of position, however, Appellees have no difficulty recognizing the application of collateral estoppel to the state court action based on the federal court's judgment adopting a congressional redistricting plan. Id. at 46-48.[8] Likewise, although claiming that the state court plaintiffs' class did not represent the interests of all federal court plaintiffs, appellees readily assert that the federal court plaintiffs did represent the interests of the state court plaintiffs. They do so without noting that certain named plaintiffs, Walker, Miller, Sudor and Vangh, in the state action were not named in, and did not participate in, the federal action. Appellees presumably adopt appellants' contention that the plaintiff classes in both the federal and state actions adequately represented all Minnesota voters. Appellees' challenges to the identity of issues in the state and federal actions and to the sufficiency of the state court's proceedings are likewise untenable. See infra part I.C.; Brief of Appellants at 26-27.

Appellees argue that their claims in the federal case regarding legislative redistricting are not moot. See Brief of Appellees at 42-44. In a strained and confusing argument, Appellees claim that the Emison plaintiffs' claims regarding the 1982 legislative districts were not moot because the state court held Chapter 246 unconstitutional. In fact, the state court's order for judgment only held that a few isolated parts of Chapter 246 were unconstitutional and the state court adopted its own legislative redistricting plan to cure the defects. A-258 to A-259; A-261 to

[8]Appellants recognize that principles of collateral estoppel would apply to the federal court's judgment adopting a congressional redistricting plan if it is not reversed. Appellees also assert that appellants did not raise the mootness issue prior to this appeal. In fact, appellants raised the issue in oral argument at the last hearing held by the federal court, on December 4, 1991, and in various memoranda to the federal court in January 1992. E.g., R-114; R-122; R-126.

A-262. Once the state court judgment was entered, its plan, not Chapter 246 or the 1982 plan, was the only plan which could be used in Minnesota. The claims in the federal action that the constitutional or statutory rights of Minnesota voters would be violated if elections were conducted under Chapter 246 or the 1982 plan were then moot since the state court judgment prohibited any such elections.[9]

The federal court's adoption of a legislative redistricting plan after the state court judgment was entered created an unworkable, disruptive, and wasteful situation. Until this Court stayed the federal court judgment, Minnesota's election officials were confronted with orders requiring legislative elections to be run under two incompatible plans. Appellees appear oblivious to this situation. Adrift from any mooring in principle, appellees' arguments would have this Court affirm the federal court's ruling and thereby restore Minnesota to the state of chaos which the federal court created for Minnesota's legislative elections.

III. THE FEDERAL COURT'S LEGISLATIVE REDISTRICTING PLAN WAS REQUIRED TO ADHERE TO CHAPTER 246 OR TO THE STATE COURT'S PLAN.

The federal court was required to defer to the parallel state court redistricting action and it was required to respect the state court's judgment adopting a legislative redistricting plan. Even if the federal court were free to adopt a legislative redistricting plan, however, the court was required to base its plan on Chapter 246.

[9]Appellees repeatedly assert that an adjudication of the Voting Rights Act claims relating to the 1982 plan was necessary. This argument is bewildering, since no party ever claimed that the 1982 districts could be used after the 1990 census revealed dramatic population disparities in the districts.

A. Chapter 246 and the State Court's Plan Reflected Discernible State Redistricting Policy.

Appellees recognize that, under the doctrine expressed in White v. Weiser, 412 U.S. 783 (1973), court-adopted redistricting plans must adhere as fully as possible to discernible state policy. Brief of Appellees at 28-29. Appellees also recognize that a court-adopted plan in Minnesota was required to be based on Chapter 246 if possible. Id. at 32-35. They argue, however, that it was not possible to base a plan on Chapter 246 because "Chapter 246 required extensive redrafting, not just technical corrections, before an election could possibly be conducted under it." Id. at 35.

Appellants have previously noted that the defects in Chapter 246 could be, and were, remedied with minor technical corrections. Brief of Appellants at 5-6. A brief review of the state court's plan or of Senate File 1596, each of which highlights the types of changes needed to correct the defects in Chapter 246, readily reveals the extremely technical and minimal nature of the changes. See A-265 to A-354; SA-120 to SA-183. Similarly, comparison of the maps from which Chapter 246 was written with the maps of Senate File 1596 illustrates that the changes are technical rather than substantive. See R-44 to R-47; R-110 to R-117. Although emphatically denying that any state policy can be gleaned from Chapter 246, appellees do not deny that the state court's plan and Senate File 1596 closely follow Chapter 246. Nor could they, as most of the districts created by Chapter 246 required no change at all, and most of the boundary lines in the remaining districts remained unchanged.[10]

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[10] As a fallback argument, appellees suggest that, even if state policy could be discerned from Chapter 246, Weiser did not require that Chapter 246 be followed because the law contained constitutional defects. Brief of Appellees at 34. This construction of the doctrine set forth in Weiser would render it meaningless, because the doctrine is not even applicable unless the state's redistricting law is found to have some constitutional or statutory defects.

Appellees' reasoning fails for yet another reason. The defects in Chapter 246 largely consisted of ambiguities which could be corrected by resort to principles of statutory construction. The state court properly interpreted the statute before making its own corrections to the few remaining defects in the law. A-258 to A-259; A-261 to A-262. Even if the federal court were not bound by the state court's judgment under Germano and rules of issue preclusion, it was bound to follow the state court's interpretation of the ambiguous portions of the law. This is true either under the doctrine set forth in Weiser[11] or under rules of statutory construction, see, e.g., McSherry v. Block, 880 F.2d 1049, 1052 n.2 (9th Cir. 1989), cert. denied, 111 S. Ct. 1404 (1991); United States v. Spadaccino, 800 F.2d 292, 296 (2d Cir. 1986). At a minimum, the federal court was required to do as the state court did and attempt to construe Chapter 246 in a way that preserved as much of the law as possible. See Minn. Stat. §§ 645.16-.43 (1990); R-114 (Legislature's memorandum to federal court regarding statutory construction of Chapter 246 and urging deference to state court's judgment and interpretation). Instead, the federal court improperly adopted a legislative plan that is not based in any respect on Chapter 246 or on the state court's plan.

B. Chapter 246 and the State Court's Plan Do Not Violate the Voting Rights Act.

Appellees' arguments regarding legislative redistricting rely heavily on the purported need to resolve Voting Rights Act issues. If, as appellants have shown, the federal court's plan was required to follow Chapter 246 or the state court's plan to the extent

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[11] Appellees fail to make any meaningful argument why the state court's plan does not constitute discernible state policy for purposes of the doctrine set forth in Weiser.

possible, then the finding of a Voting Rights Act problem[12] in one senate district in Minneapolis would justify only those changes needed to cure the problem. See Upham v. Seamon, 456 U.S. 37 (1982) (per curiam). Creation of one minority-opportunity senate district in Minneapolis did not require changes to all districts in Minneapolis, much less throughout the entire state.

Chapter 246 and the state court's plan do not violate Section 2 of the Voting Rights Act, 42 U.S.C. § 1973. There is no dispute that all three preconditions for proving a violation of Section 2, which were established in Thornburg v. Gingles, 478 U.S. 30, 48 (1986), are not met in this action. Appellees dispute only whether the Gingles preconditions need to be met at all.

Appellees claim that in Chisom v. Roemer, 111 S. Ct. 2354 (1991), this Court "rejected the use of judicially created limitations to restrict coverage under § 2." Brief of Appellees at 18-19. Appellees imply that, after Chisom, the Gingles preconditions should not be used in any Voting Rights Act case because they limit the coverage of Section 2. The Gingles preconditions, however, do not restrict the scope of Section 2 beyond the limits which Congress intended; they simply help identify unsustainable Voting Rights Act claims. Moreover, appellees read too much into the decision in Chisom. The Court in that case did not address the use of the Gingles preconditions and expressly stated that "the standard that should be applied in this litigation under § 2 is not at issue here." Chisom, 111 S. Ct. at 2368.

Appellees also argue that the reasons for applying the Gingles preconditions to multimember districts do not apply to

[12]The federal court did not find that Chapter 246 or the state court's plan violated the Voting Rights Act. Instead, it found a Voting Rights Act violation in an unidentified plan and held that Chapter 246 and the state court's plan did not sufficiently "remedy" the violation because they did not create a particular minority-opportunity senate district in Minneapolis.

single-member districts. This argument is insupportable and is fully addressed in the Brief of Appellants at pages 32 to 33 and in the Brief of the United States as Amicus Curiae Supporting Appellants at pages 9 to 16.

If the Voting Rights Act issue was relevant in the federal court action, then the parties should have had the opportunity to present evidence and arguments regarding it. There was no allegation in the case that Chapter 246 or the state court's plan violated the Voting Rights Act. The federal court nonetheless made its ruling without requesting submissions or holding a hearing on the issue. Appellees choose to ignore this due process concern and simply address the Voting Rights Act holding as if the record were complete.

The federal court's finding of a Voting Rights Act problem is clearly erroneous, even under a "totality of the circumstances" analysis and even on this partial record. One of the appellees' two primary arguments on this issue is that the minority-opportunity districts created in Chapter 246 were designed to protect incumbents rather than to enhance the power of minority voters. Brief of Appellees at 27-28. Appellees do not cite any evidence that the two minority-opportunity senate districts and three minority-opportunity House districts created by Chapter 246 in Minneapolis were so designed. At the same time, appellees ignore the undisputed evidence that the Legislature made extensive efforts to obtain the advice of minority group leaders on how to draw the best minority-opportunity districts in Minneapolis, that Chapter 246 was founded upon the "footprints" which were created from the recommendations of various minority group leaders, and that these districts were unanimously endorsed by the National Association for the Advancement of Colored People over a competing plan which contained a senate district that was very similar to the minority-opportunity senate district later included in the federal court's plan. See Brief of Appellants at 4-5, 40-41. Appellees likewise ignore the evidence that the minority-opportunity districts

created in Minneapolis by Chapter 246 did pair incumbents. See id. at 40.

The appellees' second primary argument under the "totality of the circumstances" analysis is that the under-representation of minority group members from Minneapolis in the Legislature demonstrates that Chapter 246 and the state court's plan violate the Voting Rights Act. This argument assumes that minority group members always prefer minority group members as their representatives, and it assumes that the Voting Rights Act mandates proportional representation. These assumptions are simply wrong. See id. at 30-31, 36-42. Moreover, appellees' argument overlooks the significant fact that no elections have yet been held under Chapter 246 or the state court's plan.

The federal court found under the "totality of the circumstances" analysis that the Voting Rights Act mandated the creation of a senate district of a particular shape in Minneapolis. This hour-glass shaped senate district stretches from south Minneapolis around the downtown area and into north Minneapolis, and it makes the creation of a second minority-opportunity senate district in Minneapolis impossible. See A-1 to A-2 (maps of minority-opportunity districts). The Legislature, after extensive investigation and consideration, elected not to draw the hour-glass shaped senate district which would combine the socially, economically, and politically distinct neighborhoods of north and south Minneapolis. The Legislature chose instead to create two effective minority-opportunity senate districts, one in north Minneapolis and one in south Minneapolis. Its decision was a quintessentially political decision. The federal court's conclusion that the Legislature's plan runs afoul of the Voting Rights Act is simply an effort to substitute its judgment for that of the Legislature and is clearly erroneous even on the incomplete record in this action.

The districts created in Chapter 246 and adopted in the state court's plan do not violate the Voting Rights Act. The

federal court was therefore required to defer to these plans in the City of Minneapolis as well as the rest of the state, and its judgment adopting a legislative redistricting plan should be vacated.

IV. THE FEDERAL COURT'S CONGRESSIONAL REDISTRICTING PLAN SHOULD HAVE BEEN BASED ON SENATE FILE 1597.

The federal court erred in adopting a congressional redistricting plan rather than deferring to the pending and active state court action. Even if the federal court acted properly, its judgment adopting a congressional plan should be vacated because it was not based on Senate File 1597.

Appellees agree that a court-adopted redistricting plan must be based on state policy to the extent possible and that an act of the Legislature, without the Governor's concurrence, constitutes state policy. See Brief of Appellees at 29-30 (recognizing that joint legislative resolution constitutes state policy). Appellees nonetheless argue that, although Senate File 1597 was adopted by the Legislature, it was not state policy because the Governor vetoed it.

The doctrine established in White v. Weiser, 412 U.S. 783 (1973), prevents courts from engaging unnecessarily in the inherently political process of redistricting. It is based on the sound understanding that political bodies, such as legislatures, are better equipped to address the competing political concerns which inevitably enter into redistricting decisions. See Upham v.Seamon, 456 U.S. 37, 41-42 (1982). These policy concerns require courts to defer to a redistricting plan which is adopted by a state's legislative branch, the branch which is charged with drafting redistricting plans, even if the executive branch is not in agreement with all provisions of the plan. Without this requirement, a court would be in the position of rejecting the legislature's decision and

creating a plan which the legislature could have adopted but chose not to. The decisions of this Court, and of other courts support appellants' position. See Brief of Appellants at 47-48.

Because the federal court wholly ignored Senate File 1597 in the plan it adopted, its judgment adopting a congressional redistricting plan should be vacated.

CONCLUSION

The doctrines expressed in Germano, Gingles, and Weiser and the issue preclusion doctrines of the Full Faith and Credit Act, collateral estoppel, and mootness provide sound and effective guidelines to federal courts. These rules permit federal courts to address redistricting claims effectively but prevent federal courts from interfering unnecessarily with this intensely political state responsibility. Germano bars federal courts from assuming a role in redistricting so long as state institutions are taking appropriate actions; the Full Faith and Credit Act and the doctrines of collateral estoppel and mootness prevent courts from relitigating redistricting issues which have already been addressed; the Gingles preconditions require meaningful proof of violations of Section 2 of the Voting Rights Act; and the doctrine established in Weiser requires courts to limit the remedies they adopt to correcting the defects they find. These rules are clearly stated, easily applied, and supported by sound policy rationale. The federal court's judgment

adopted legislative and congressional redistricting plans in derogation of each of these principles and should be vacated.

DATED: July 30, 1992

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MOTION FILED
MAY 29 1992

(9)

No. 91-1420

IN THE

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OCTOBER TERM, 1991

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Appellants,

v.

JAMES EMISON, *et al.*,
Appellees.

On Appeal from the United States District Court for the District of Minnesota

MOTION FOR LEAVE TO FILE BRIEF AMICI CURIAE AND BRIEF AMICI CURIAE ON BEHALF OF CONGRESSMAN MARTIN FROST (TX), CONGRESSMAN JERRY HUCKABY (LA), JAMES H. EVANS, ATTORNEY GENERAL, STATE OF ALABAMA, BRENDA K. MITCHELL, SECRETARY OF THE COMMONWEALTH OF PENNSYLVANIA, STATE SENATE MINORITY LEADER MANFRED OHRENSTEIN (NY), STATE ASSY. SPEAKER SAUL WEPRIN (NY), STATE SENATE PRESIDENT PHILIP J. ROCK (IL), STATE REPRESENTATIVE PETER R. WALLACE (FL), CHAIRMAN, HOUSE REAPPORTIONMENT COMMITTEE, STATE SENATE PRESIDENT GWEN MARGOLIS (FL), IN SUPPORT OF APPELLANTS

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WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

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Pursuant to Rule 37 of the Rules of the Supreme Court of the United States, Congressman Martin Frost (TX), Congressman Jerry Huckaby (LA), James H. Evans, Attorney General, State of Alabama, Brenda K. Mitchell, Secretary of the Commonwealth of Pennsylvania, State Senate Minority Leader Manfred Ohrenstein (NY), State Assy. Speaker Saul Weprin (NY), State Senate President Philip J. Rock (IL), State Senate President Gwen Margolis (FL) and State Representative Peter R. Wallace (FL), Chairman, House Reapportionment Committtee, respectfully move this Court for leave to file the attached brief *amici curiae* in support of the appellants. The appellants have sought the written consent of all parties for the filing of this brief. Appellants have consented but the appellees have not.

The *amici* consist of Members of Congress, state legislators and other state officials. All the *amici* have an interest in the redistricting process and in protecting the role of state instituions in the process. The power to redraw state legislative and congressional districts, as this Court has repeatedly held, is a power reserved to the states. States and their elected officials who draft, defend and execute redistricting statutes have an important interest in redistricting, as do state legislators and Members of Congress, who are directly affected by redistricting plans.

The brief that *amici* seek to file supplements but does not duplicate the appellants' brief. The attached brief will bring to the attention of the Court relevant matters that are not presently before the Court and are not expected to be presented by the appellants or the appellees. The *amici* brief focuses solely on the issues raised by the federal court's interference in the state court proceeding and does not address the merits of the federal court's decision.

First, the *amici* represent to the Court the long history of state court involvement in the redistricting process. Since *Baker v. Carr*, 369 U.S. 186 (1962), state courts have been actively engaged in the redistricting process. In fact, as discussed in the attached brief, 21 states have constitutional or statutory provisions either requiring or providing for state court review prior to the implementation of legislative redistricting plans. The action of the United States District Court for the District of Minnesota risks rendering these state provisions meaningless. Unless the district court's decision is reversed, litigants and federal courts will be able to simply ignore any redistricting decision made by state courts. Minnesota is not one of the 21 states with such a provision and the appellants have, subsequently, not addressed the effect of the federal court's decision on these states.

Second, the interest of other states experiencing similar jurisdictional disputes is not expected to be represented to the Court. No fewer than 8 states, in addition to Minnesota, have experienced duplicative redistricting litigation in state and federal courts. This has resulted in excessive financial expenditures, conflicting judgments and serious harm to our federal system of justice. All the *amici* have an interest, in this time of tight budgetary constraints, in minimizing the cost of redistricting litigation.

Third, the *amici* bring to this Court's attention the fact that the federal court's decision conflicts with developments in other states. In other states experiencing similar jurisdictional disputes, federal courts generally have deferred to the ongoing state proceeding. The federal courts become involved, if at all, only after the state courts have rendered a decision.

Fourth, the *amici* bring to the Court's attention a recent federal court decision, in a nearly identical case, directly in conflict with the Minnesota federal court's decision. In *Members of the California Democratic Congressional Delegation v. Eu*, No. C-91-3383 (N.D. Cal. March 3, 1992), a three-judge federal court concluded that the doctrine enunciated by this Court in *Younger*

v. Harris, 401 U.S. 37 (1970), required abstention once the California Supreme Court exercised jurisdiction over congressional and legislative redistricting. The appellants are not expected to pursue the *Younger* abstention doctrine in their brief or oral argument to the Court.

For the reasons set forth above, *amici* respectfully request that the Court grant their motion to file a brief as *amici curiae* in support of the appellants.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1991

No. 91-1420

JOAN GROWE, SECRETARY OF THE STATE OF MINNESOTA, *et al.*,
Appellants,

v.

JAMES EMISON, *et al.*,
Appellees.

On Appeal from the United States District Court for the District of Minnesota

BRIEF AMICI CURIAE ON BEHALF OF CONGRESSMAN MARTIN FROST (TX), CONGRESSMAN JERRY HUCKABY (LA), JAMES H. EVANS, ATTORNEY GENERAL, STATE OF ALABAMA, BRENDA K. MITCHELL, SECRETARY OF THE COMMONWEALTH OF PENNSYLVANIA, STATE SENATE MINORITY LEADER MANFRED OHRENSTEIN (NY), STATE ASSY. SPEAKER SAUL WEPRIN (NY), STATE SENATE PRESIDENT PHILIP J. ROCK (IL), STATE REPRESENTATIVE PETER R. WALLACE (FL), CHAIRMAN, HOUSE REAPPORTIONMENT COMMITTEE, STATE SENATE PRESIDENT GWEN MARGOLIS (FL), IN SUPPORT OF APPELLANTS

INTERESTS OF AMICI CURIAE

The *amici* consist of Members of Congress, state legislators, and other state officials.

All the *amici* have an interest in the redistricting process and in protecting the role of state courts in that process. Few issues are as fundamental to states as state legislative and congressional redistricting. The power to redraw state legislative and congressional districts, as

this Court has repeatedly held, is a power reserved to the states. States and their elected officials who draft, defend and execute redistricting statutes have an important interest in redistricting, as do state legislators and Members of Congress, who are directly affected by redistricting plans. States also have an interest in preserving the jurisdiction and powers of their courts. Governors (as the officials charged with executing the laws of their states) and the State Attorneys General (as the chief legal officers of these States) have a similar interest in protecting the province of state courts.

Moreover, state courts have a vital role to play in the redistricting process. No fewer than 21 states have constitutional or statutory provisions either requiring or providing for state court review prior to the implementation of legislative redistricting plans.[1] The action of the

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[1] ALASKA CONST. art. VI, § 11 (original jurisdiction vested in the superior court to ensure that a valid plan is adopted); ARK. CONST. art. VIII, § 5 (original jurisdiction in state supreme court to compel Apportionment Board to perform its duties and to revise arbitrary action of the Board); COLO. CONST. art. V, § 48 (1)(e) (state supreme court required to review and approve plan); CONN. CONST. art. III, § 6 (d) (original jurisdiction vested in state supreme court to ensure that a valid plan is adopted); FLA. CONST. art. III, § 16 (b) (state supreme court required to determine validity of apportionment plan); HAW. CONST. art. IV, § 10 (original jurisdiction vested in state supreme court to ensure that a valid plan is adopted); ILL. CONST. art. IV, § 3 (b) (state supreme court selects individuals to be commission redistricting tie-breakers and has original jurisdiction to review plan); IOWA CONST. art. III, § 36 (supreme court has original jurisdiction to review apportionment plan); KAN. CONST. art. X, § 1 (c) (automatic review by state supreme court); LA. CONST. art. III, § 6 (b) (if legislature fails to reapportion, responsibility rests with state supreme court); ME. CONST. art. XXI, § 1571- A(3) (state supreme court vested with original jurisdiction to hear any challenge to apportionment plan and make an apportionment if the legislature fails to act); MD. CONST. art. III, § 5 (the court of appeals shall have original jurisdiction to review redistricting plan and grant appropriate relief); MASS. CONST. art. CI, § 3 (original jurisdiction vested in the supreme judicial court); MICH. CONST. art. I, § 2 (state supreme court has original jurisdiction); MO. CONST. art. III, § 2 (upon failure of commission to adopt redistricting plan, state supreme court appoints appellate judges to draw a plan); N.J. CONST. art. 4, § 3 (state supreme court appoints eleventh member of redistricting commission if commission fails to agree on a eleventh member); N.Y. CONST. art. III, § 5 (redistricting subject to review by state supreme court by petition of any citizen); PA. CONST. art. II, § 17 (state supreme court selects fifth commission member if other members unable to agree; Court is also vested with original jurisdiction to review plan); S.D. CONST. art. III, § 5 (if legislature fails to redistrict, responsibility rests with the state supreme court); VT. STAT. ANN. tit. 17 § 1909 (1982) (state supreme court provided with original jurisdiction over redistricting matters); WASH. CONST. art. II, § 43 (6) (state supreme court required to redistrict upon the failure of the redistricting commission to so do).

United States District Court for the District of Minnesota risks rendering these state constitutional provisions meaningless and casts doubt on the powers of state courts in all 50 states to adjudicate redistricting cases. Unless the district court's decision is reversed, litigants and federal courts will be able to simply ignore any redistricting decision made by state courts. This result would foster duplicative litigation and burden states with exorbitant financial expenditures.

The risk to the authority of state courts posed by the district court's decision in this case is great. In the most recent round of redistricting, following the 1990 census, there have been numerous instances in which federal and state courts have been asked to judge the validity of the same redistricting plan. In addition to Minnesota, disputes regarding concurrent jurisdiction have arisen in Alabama, *Wesch v. Hunt*, No. 91-0787 (S.D. Ala. March 9, 1992), *Hunt v. Morris*, 591 So. 2d 83 (Ala. 1992); California, *Members of the California Congressional Delegation v. Eu*, No. C-91-3383 (N.D. Cal. March 3, 1992) and *Wilson v. Eu*, 1 Cal.4th 707, 823 P.2d 545 (1992); Florida, *DeGrandy v. Wetherell*, No. 92-40015 (N.D. Fla. filed March 9, 1992), *In Re: Constitutionality of Senate Joint Resolution 2G, Special Apportionment Session 1992*,

No. 79,674 (Fla. May 13, 1992); Illinois, *Legislative Redistricting Commission v. LaPaille*, No. 91-C-6318, 1992 U.S. Dist. LEXIS 2930 (N.D. Ill. March 11, 1992) and *Burris v. Ryan*, 147 Ill. 2d 270, 588 N.E.2d 1033 (1992); New York, *Wolpoff v. Cuomo*, No. 14757-1992 (N.Y. Sup. Ct., Bronx County, filed May 8, 1992), *Scaringe v. Marino*, No. 92-593 (N.D.N.Y. filed May 7, 1992), *Reid v. Marino*, No. 9567-1992 (N.Y. Sup. Ct., Kings County, filed March 26, 1992) *Puerto Rican Legal Defense and Education Fund v. Gantt*, No. 92-1521 (E.D.N.Y. filed March 31, 1992); Ohio, *Voinovich v. Ferguson*, No. 91-1882 (Ohio, Feb. 14, 1992); Pennsylvania, *Mellow v. Mitchell*, No. 7 M.D. Misc. Dkt. 1992, 1992 WL 74643 Pa. March 26, 1992)), *Nerch v. Mitchell*, No. 92-0095 (M.D.Pa. filed March 20, 1992), *Harrison v. Pennsylvania Legislative Reapportionment Commission*, No. 92-0603, 1992 WL 95909 (E.D.Pa. April 21, 1992), and *In Re 1991 Pennsylvania Legislative Reapportionment Commission*, 1992 WL 89158 (Pa. May 5, 1992) and; Texas, *Terrazas v. Slagle*, No. 91-425, 91-426, 91-428, 1991 WL 328626 (W.D. Tex. Dec. 24, 1991), *appealed sub nom. Richards v. Terrazas*, No. 91-1270 (docketed Feb. 5, 1992) and *Slagle v. Terrazas*, No. 91-1546 (docketed March 23, 1992), *Mena v. Richards*, No. C-454-91-F (332nd Jud. Dist. Hidalgo Co., Tex. Nov. 27, 1991).

All the *amici* urge this Court to reverse the district court and reaffirm the preeminent role of a state's judiciary in the redistricting process. This brief focuses solely on the issues raised by the district court's interference with the state court proceedings and does not address the merits of the district court's decision.

Pursuant to Rule 37 of the Supreme Court of the United States, written consent of all the parties was requested. Appellants have consented but the appellees have not. Motion of *amici* for leave to file this brief has been submitted to this Court.

STATEMENT OF THE CASE

In the interests of brevity, the *amici curiae* adopt the statement of the case set forth in the brief of the Minnesota appellants.

SUMMARY OF ARGUMENT

1. The United States District Court for the District of Minnesota violated the principles articulated in *Scott v. Germano*, 381 U.S. 407 (1965) (per curiam) by failing to defer to the parallel state court redistricting proceeding. When a state court assumes jurisdiction over the legislative and congressional redistricting process, due to legislative impasse or the inability of the state to adopt a constitutional redistricting plan, a federal court is required to defer to the ongoing state proceedings. The district court's failure to defer to the state proceedings intrudes on the strong interest of states to ensure the integrity of elections held within their borders and the integrity of their judiciary.

2. The district court exceeded its authority when it adopted a legislative redistricting plan after the state court had entered judgment adopting its own legislative redistricting plan. Under the Full Faith and Credit Act, 28 U.S.C. § 1738, the district court was required to respect the state court judgment and to dismiss all claims relating to legislative redistricting. A district court cannot completely ignore a state court judgment and issue a competing legislative plan. Such an action would render meaningless numerous state constitutional provisions vesting state courts with jurisdiction over legislative redistricting.

ARGUMENT

THE FEDERAL COURT'S LEGISLATIVE AND CONGRESSIONAL REDISTRICTING PLANS SHOULD BE VACATED

I. THE FEDERAL COURT WAS REQUIRED BY THE PRINCIPLES ARTICULATED IN *SCOTT v. GERMANO* TO DEFER TO THE ONGOING STATE COURT PROCEEDINGS

As this Court knows, following its seminal decision in *Baker v. Carr*, 369 U.S. 186 (1962), holding malapportionment claims justiciable, courts were deluged with suits brought by litigants contending that districting plans in their states violated the Constitution. Over the years, state courts have adjudicated many of these suits. State courts, as courts of general jurisdiction, have the authority to hear federal constitutional claims, subject of course to review by this Court pursuant to 28 U.S.C. 1257.

In 1965, in *Scott v. Germano*, 381 U.S. 407 (1965), this Court explicitly approved the involvement of state courts in the redistricting process. In *Scott* this Court held, on facts similar to those of the present case, that a federal court hearing a redistricting case should stay its hand pending the completion of related state proceedings. In that case, the Illinois Supreme Court had ruled that the districting plan for the Illinois State Senate was unconstitutional and directed the legislature to develop a new districting plan that satisfied all applicable legal requirements. One of the parties to the state court action asked a federal district court, which was already hearing a related matter, to stay its action pending resolution of the state court proceedings. The district court, however, refused to do so. The Supreme Court reversed stating that:

> We believe that the District Court should have stayed its hand. The power of the judiciary of a State to require valid reapportionment or to formulate a valid redistricting plan has not only been recognized by this Court but appropriate action by the States in such cases has been specifically encouraged.

Id. 381 U.S. at 409.

Following *Scott*, state courts have continued to hear and decide redistricting cases. *See, e.g., Mellow v. Mitchell*, No. 7 M.D. Misc. Dkt. 1992, 1992 WL 74643 (Pa. March 26, 1992); *Lockert v. Crowell*, 656 S.W.2d 836 (Tenn. 1983); *Assembly v. Deukmajian*, 180 Cal. Rptr. 297, 30 Cal. 3d 638, 639 P.2d 939 (1982); *Legislature v. Reinecke*, 6 Cal. 3d 595, 99 Cal. Rptr. 481, 492 P.2d 385 (1972); *Silver v. Brown*, 63 Cal. 2d 2870, 46 Cal. Rptr. 308, 405 P.2d 132 (1965); *Harris v. Anderson*, 194 Kan. 302, 400 P.2d 25 (1965), *cert. denied*, 382 U.S. 894 (1965); *Hughes v. Maryland Committee for Fair Representation*, 241 Md. 471, 217 A.2d 273 (1966), *cert. denied*, 384 U.S. 950 (1966); *Jackman v. Bodine*, 43 N.J. 453, 205 A.2d 713 (1964).

Federal courts have routinely abstained from assuming jurisdiction over redistricting litigation when state courts have previously assumed jurisdiction.[2] This has continued

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[2] *See, e.g., Bianchi v. Griffing*, 393 F.2d 457, 461 (2d Cir. 1968) (first-filed federal action stayed in favor of later-filed state action to invalidate apportionment of county board of supervisors); *Badham v. Eu*, 568 F. Supp. 156, 158 (N.D. Cal.) (federal court abstained in deference to congressional redistricting by state court, noting that "[r]eapportionment, which is carried out by the states, is an area in which state courts are encouraged to require and formulate valid plans"), *aff'd sub nom. Badham v. United States District Court*, 721 F.2d 1170 (9th Cir. 1983); *Avens v. Wright*, 320 F. Supp. 677, 686 (W.D. Va. 1970); *Mahoney v. Burkhardt*, 299 F. Supp. 787, 789 (D.N.J. 1969) (U.S. District Court, on its own motion, abstained from acting in legislative apportionment case where the state supreme court was in the process of resolving the matter); *Ince v. Rockefeller*, 290 F.Supp. 878 (S.D.N.Y. 1968) (in suit challenging legislative districts under Fourteenth and Fifteenth Amendments, federal court abstained in favor of first-filed state action).

to be a common occurrence during the present round of redistricting.[3]

This Court's decision in *Scott v. Germano* establishes that it is state agencies, including state courts, that have initial responsibility in fashioning redistricting plans. When the state legislature or other state entity fails to carry out its reapportionment responsibility, intrusion by the judiciary into this intensely political and divisive function is better left to the state court. This principle, recognized in *Scott*, is consistent with the Court's decision in *Reynolds v. Sims*, 377 U.S. 533 (1964) and its progeny establishing the primacy of state legislatures in developing redistricting plans and remedying any defects. This Court's prior decisions recognize that redistricting is essentially a state concern, involving state officials, state interests, state election processes and representatives of the state.

The federal courts should, accordingly, grant great deference to state agencies or state entities, including state courts, in an area of such fundamental state importance as redistricting. State courts—with judges who swear allegiance to the same Constitution as federal judges—are fully competent to adjudicate issues of federal constitutional law that redistricting controveries occasion. State courts are likewise competent to decide issues arising under the Voting Rights Act of 1965, 42 U.S.C. §§ 1973 *et seq.*, except for those issues as to which the Act vests exclusive jurisdiction in the United States District Court for the District of Columbia. *See Hathorn v. Lovorn*, 457

[3] *See Members of the Cal. Democratic Congressional Delegation v. Eu*, No. C-91-3383 (N.D. Cal. March 3, 1992); *Nerch v. Mitchell*, No. 92-0095 (M.D. Pa. filed March 20, 1992) (federal court stayed proceedings pending Pennsylvania Supreme Court decision adopting new congressional districts in *Mellow v. Mitchell*, No. 7 M.D. Misc. Dkt. 1992, 1992 WL 74643 (Pa. March 26, 1992)); *Legislative Redistricting Commission v. LaPaille*, No. 91-C-6318, 1992 U.S. Dist. LEXIS 2930 (N.D. Ill. March 11, 1992).

U.S. 255, 269 (1982). Allowing federal district courts to interfere with the exercise of jurisdiction by state courts over redistricting matters violates well-established principles of federalism.[4] As Professor Tribe has explained:

> Federal injunctions which disrupt state judicial proceedings are doubly offensive: they not only hinder state efforts to maintain a smoothly running law enforcement system, but also deny the principle of comity, the fundamental premise of judicial federalism which holds that, since both federal and state courts have a duty to enforce the Constitution, there is no constitutional basis, in the absence of some infirmity in the state judicial process itself, for preferring federal courts to state courts as adjudicators of federal constitutional claims.

L. Tribe, *American Constitutional Law* at 147-148 (1978) (note omitted).

Consistent with *Scott*, this Court's subsequent decisions recognize that federal courts play only a limited role in developing redistricting plans. In *Chapman v. Meier*, 420 U.S. 1 (1975), the Court noted "(w)e say once again what has been said on many occasions: reapportionment is primarily the duty and responsibility of the State through its legislature or other body, rather than a federal court." *Id.* at 27. The federal courts are required to give legislatures and state courts an opportunity to remedy constitutionally infirm redistricting schemes. *See Reynolds v. Sims*, 377 U.S. 533, 586 (1964); *Wise v. Lipscomb*, 437 U.S. 535 (1978); *McDaniel v. Sanchez*, 452 U.S. 130, 150 n. 30 (1981). It is only when the state, through its own institutions, is unable to adopt a constitutional redistricting plan that a federal court, as a last resort, may step

[4] *See generally, Younger v. Harris*, 401 U.S. 37, 44 (1970) (The concept of "Our Federalism" means, *inter alia* that "the National Government, anxious though it may be to vindicate and protect federal rights and federal interests, always endeavors to do so in ways that will not unduly interfere with the legitimate activities of the States").

in to order that a particular plan be implemented. This is true even in cases where the federal court has already acted: "The Court has repeatedly encouraged the state court to fashion appropriate relief in reapportionment cases, even after a federal court has itself entered an order." *Travia v. Lomenzo*, 86 S. Ct. 7, 9 (1965) (In Chambers Opinion).

The district court's decision in this case ignores the principles set forth in *Scott*. Although couched in terms of an injunction against Minnesota's Secretary of State, the district court's order has the same effect as its previously-vacated injunction against the Minnesota state court. Under the district court's order, as under its previous injunction, the state court is effectively prohibited from implementing its redistricting plan.

As demonstrated above, when redistricting actions are commenced in state and federal courts, the federal court is required to defer to the state proceeding. Such a course of action is consistent with our system of federalism and the prior teachings of this Court. The states must be provided the opportunity to enable their own institutions to address one of the most fundamental and important state issues—legislative and congressional redistricting.

In short, for three decades, state courts have played an important part in the adjudication of redistricting matters. In the latest round of redistricting litigation, following the 1990 census, however, state courts have found themselves increasingly under attack by litigants seeking to avoid state court jurisdiction. Indeed, in the instant case, the litigants sought to have a federal court adopt a redistricting plan after the state court had previously adopted a valid plan. This Court should reaffirm the long standing principle that states have a preeminent interest in ensuring that state institutions, including state courts, can continue to resolve redistricting disputes. Reversing the district court's decision will vindicate this interest and

prevent the wasteful, needless and duplicative litigation damaging to our system of federalism.

II. THE FEDERAL COURT ERRED IN DECLINING TO ABSTAIN FROM INTERFERING WITH PENDING STATE JUDICIAL PROCEEDINGS UNDER THE DOCTRINE ESTABLISHED IN *YOUNGER v. HARRIS*

Under the principles established by this Court in *Younger v. Harris*, 401 U.S. 37 (1971), the federal court was required to abstain from interfering with the pending state judicial proceedings. The *Younger* abstention doctrine has its roots in the principles of federalism and in the recognition of the "legitimate interests of both State and National Governments," which may occasionally conflict. *Id.* 401 U.S. at 44. The *Younger* Court was concerned that permitting duplicative litigation and the attendant risk of conflicting judgments would cause great harm to relations between the federal government and the states:

> Th(e) underlying reason for restraining courts of equity from interfering with criminal prosecutions is reinforced by an even more vital consideration, the notion of "comity," that is a proper respect for state functions, a recognition of the fact that the entire country is made up of a Union of separate state governments, and a continuance of the belief that the National Government will fare best if the States and their institutions are left free to perform their functions in their separate ways.

Id.

Younger requires federal courts to defer to ongoing state judicial proceedings where the state proceedings implicate important state interests and afford federal plaintiffs an adequate opportunity to raise their constitutional challenges, "unless state law clearly bars the interposition of the constitutional claims." *Middlesex County Ethics Committee v. Garden State Bar Association*, 457 U.S. 423,

431 (1982). Although once thought to be applicable only to criminal proceedings, it is now well established that the *Younger* doctrine of abstention is fully applicable to state civil proceedings. *Id.*, 457 U.S. at 432; *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 11 (1987) (*Younger* abstention applies "not only when the pending state proceedings are criminal but also when certain civil proceedings are pending, if the State's interests in the proceeding are so important that exercise of the federal judicial power would disregard the comity between the States and the National Government.").

The Minnesota federal court was required to abstain under *Younger*. Redistricting clearly implicates important state interests that state courts are fully competent to resolve. The federal court's disregard of the state proceeding and intrusion into the state redistricting process is exactly the type of dispute this Court sought to avoid in *Younger* and its progeny. The preservation of "Our Federalism" requires federal courts to abstain when confronted with a redistricting dispute being addressed by the state courts.

Recently, in a nearly identical case, a three-judge federal court in California concluded that the *Younger* doctrine required abstention once the California Supreme Court exercised jurisdiction over congressional and legislative redistricting. *Members of the California Democratic Congressional Delegation v. Eu*, No. C-91-3383 (N.D. Cal. March 3, 1992). The court noted that redistricting implicated important state interests and that the state courts have concurrent jurisdiction over claims under the United States Constitution and under the Voting Rights Act. "Absent the conferring of exclusive jurisdiction on the federal courts, and absent allegations that the state court's proceedings were in bad faith or unconstitutional, we must abstain and presume that the state courts will safeguard federal constitutional and voting rights." *Id.* slip op. at 20.

III. THE FEDERAL COURT WAS REQUIRED TO RESPECT THE STATE COURT JUDGMENT AND DISMISS ALL CLAIMS RELATING TO LEGISLATIVE DISTRICTING

When the Minnesota state court issued its final order establishing new legislative districts, the federal court was required to dismiss all claims relating to legislative districting. The case became moot since there was presently a state legislative districting plan adopted by the state. The federal court was not free to ignore the state court plan and proceed as if the state had not acted.

A. The Federal Court's Order Violates the Full Faith and Credit Act, 28 U.S.C. § 1738

The *amici* adopt the argument set forth in the Minnesota appellant's brief on the violation of the Full Faith and Credit Act.

B. The Federal Court's Decision Renders Meaningless Constitutional and Statutory Provisions in 21 States

The United States Constitution is silent on how a state is to redistrict. States have chosen a variety of methods to redraw legislative and congressional districts, including citizen commissions, bipartisan commissions, apportionment boards and legislative bill enactment. However, regardless of the redistricting mechanism, many states provide state courts with the responsibility to ensure that valid plans are adopted by state institutions.[5]

These provisions allow for an organized and speedy review of plans and ensure that any redistricting plan complies with applicable legal requirements. Under our system of federalism, state courts have the authority to render decisions on the legality of redistricting plans. The federal courts decision in Minnesota would do severe damage to our Nation's concept of federalism. State

[5] *See* note 1, *supra*.

courts would have little incentive to carry out their state constitutionally-mandated role to review or adopt legislative redistricting plans.[6]

If a federal district court at any time can adopt its own redistricting plan regardless of a parallel state court proceeding or decision, there is no reason for the state court ever to become involved in redistricting cases. The rule adopted by the Minnesota district court would invite continued litigation of redistricting issues that have already been decided in the state courts and would remove from state court consideration the vital issues of state policy raised in redistricting cases. This has already resulted in duplicative litigation in state and federal courts, excessive financial expenditures, conflicting judgments and serious harm to our federal system of justice. Concepts of federalism are rendered meaningless if a federal court can simply ignore state court redistricting efforts and assume the task itself.

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[6] Even where state constitutions do not expressly provide state courts with jurisdiction over congressional redistricting, the same principles of federalism and judicial economy weigh in favor of state courts adopting congressional plans when the state is unable to adopt a valid plan. Congressional redistricting plans have recently been adopted by the Pennsylvania and California Supreme Courts. *See Mellow v. Mitchell*, No. 7 M.D. Misc. Dkt. 1992, 1992 WL 74643 (Pa. March 26, 1992); *Wilson v. Eu*, 1 Cal. 4th 707, 823 P.2d 545 (1992).

CONCLUSION

This case presents the Court with an opportunity to reaffirm the important role of state courts in our system of government. State courts should have the right to exercise jurisdiction over such a fundamentally important state interest as congressional and legislative redistricting. The federal court in Minnesota disregarded well established principles of federalism and this Courts prior precedent on abstention. Affirmation of the lower courts ruling would severely infringe on the ability of the state judiciary to carry out its constitutional and statutory duties. State court decisions would become meaningless if a federal court could simply ignore them. The expense placed on states as a result of duplicative litigation would be exorbitant and, additionally, would place an extreme burden on the limited resources of the judiciary.

This Court should vacate the legislative and congressional redistricting plans adopted by the district court and reverse the lower courts February 19, 1992 decision.

Respectfully submitted,

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Supreme Court, U.S.
FILED
JUN 10 1992
OFFICE OF THE CLERK

No. 91-1420

In The
Supreme Court of the United States
October Term, 1991

JOAN GROWE, SECRETARY OF STATE OF THE STATE OF MINNESOTA, ET AL.,
Appellants,

vs.

JAMES EMISON, ET AL.,
Appellees.

Appeal from the United States District Court for the District of Minnesota

OBJECTION OF APPELLEES TO MOTION FOR LEAVE TO FILE BRIEF AMICI CURIAE

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OBJECTION TO MOTION FOR LEAVE TO FILE AMICI CURIAE BRIEF

Certain United States congressmen and state legislators and officials have filed with this Court a motion seeking leave to file a brief of amici curiae in this matter.[1] Appellees have withheld consent under Supreme Court Rule 37 to the filing of this brief because the proposed brief addresses only questions of law that have been and will continue to be presented by the parties. Appellees object on the same ground to a motion for leave to file such an amicus brief. See Supr. Ct. R. 37.4.

ARGUMENT

The Supreme Court Rules proscribe filing of amicus curiae briefs that raise issues already brought to the Court's attention by the parties. See Supr. Ct. R. 37.1, 37.4. Further, Rule 37 states, "A motion for leave to file a brief amicus curiae when consent has been refused is not favored." Supr. Ct. R. 37.2. Despite the clear rules disfavoring submission of such duplicative briefs, particularly where consent has been refused, amici propose filing a brief that is merely duplicative of issues already raised and discussed by appellants. Cf. Amici Brief at 5-14 with Brief of Appellants at i, 14-29.

Amici suggest four justifications in support of the proposition that their brief is supplementary and not duplicative. See Motion for Leave. First, amici note the "long history" of state court involvement in adjudicating redistricting disputes, and they

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[1]The proposed brief of amici will hereinafter be referred to as "Amici Brief." The motion for leave to file the Amici Brief will hereinafter be referred to as "Motion for Leave."

cite state constitutions that provide defined state court roles in the redistricting process. However, the constitutional provisions noted by amici are all either unique establishments of a specific role for specific state courts, making the provisions irrelevant to Minnesota,[2] or they recite principles of state court jurisdiction that have already been argued by appellants.[3] See White v. Weiser, 412 U.S. 783, 794-95 (1973); Scott v. Germano, 381 U.S. 407, 409 (1965).

This Court has previously recognized that redistricting is a task assigned not to an entity but to a process that is established under the laws of the individual state. See Smiley v. Holm, 285 U.S. 355, 365-73 (1931); see also Duxbury v. Donovan, 272 Minn. 424, 432-44, 138 N.W.2d 692, 697-98 (1965). All courts must defer in the first instance to a state's redistricting process. See Weiser, 412 U.S. at 794-95; see also Smiley, 285 U.S. at 365-73 (redistricting is performed according to legislative process and, in Minnesota, is accomplished through legislative and executive action). If a state constitution establishes a unique state court role in the redistricting process, unique considerations exist.

If a state constitution contains no provision establishing a defined role for a state court, there are no unique considerations. The issue instead is only one of federal court jurisdiction over plans enacted by the state's redistricting process. This is the situation in Minnesota.

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[2]See, e.g., ILL. CONST. art. IV, § 3(b) (state court selects individuals on commission); N.J. CONST. art. 4, § 3 (contingent right of state court to appoint member of redistricting commission); PA. CONST. art. II, § 17 (same).

[3]See, e.g., ALASKA CONST. art. VI, § 11; LA. CONST. art. III, § 6(b) (state court has reapportionment responsibility if legislature fails to reapportion); ME. CONST. art. XXI, § 1571-A(3) (same); S.D. CONST. art. III, § 5 (same).

The issue of the existence of federal court authority and any concomitant impacts on state court authority over redistricting disputes has been and will be addressed fully by the parties. Indeed, appellants devote over eight pages of their brief to this point. See Brief of Appellants at 14-22.

Amici's second and third purported justifications for their brief both relate to the existence of other state redistricting cases. Appellants already have noted the pendency of these other cases and have in fact provided a table listing many of the decisions cited by amici. See Brief of Appellants at 22 n.17; A-391 to A-392. Furthermore, the cases that amici cite are not discussed in any meaningful way in the Amici Brief. See Amici Brief at 3-4, 7, 8 n.3. Amici have not substantively argued their second and third points at all.

By their fourth point, amici contend that Members of the California Democratic Congressional Delegation v. Eu, No. C-91-3383 (N.D. Cal. March 3, 1992), and its reference to Younger v. Harris, 401 U.S. 37 (1970), will not be "pursued" by appellants and that the Amici Brief discussing these cases is therefore merited.

However, appellants have noted both the Eu and Younger cases. See Brief of Appellants at 15 n.9, 16, 20 n.13, 22 n.17. Appellants have also described the Younger abstention doctrine. See id. at 15 n.9. Appellants have in fact quoted the unpublished Eu opinion's reference to Younger. See id. at 16. Amici propose only duplicative argument on this issue.

The Amici Brief adds nothing new to the Brief of Appellants. The simple fact is that the amici, as is evident from their own argument summary, raise only two issues. See Amici Brief at 5. First, amici contend that the federal court violated Germano and abstention principles when it acted. See id. Second,

amici argue that the federal court failed to give the proper preclusive effect to the state court's legislative redistricting plan under the Full Faith and Credit Act, 28 U.S.C. § 1738. See id. Amici's proposed brief argues only these two issues, at one point going so far as to adopt appellants' brief. See id. at 6-14.

These two precise issues, abstention and preclusive effect, are the first two questions set forth on the first page of appellants' brief, see Brief of Appellants at i, and they are the entire first half of appellants' merits argument, see id. at 14-29. The Amici Brief is wholly duplicative of briefs already presented to this Court. The motion for leave to file the Amici Brief should be denied.

Dated: June 11, 1992.

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